October 2000

Spectrum Management and Telecommunications Policy

Amendments and Supplements and Clarification Questions to the Policy and Licensing Procedures for the Auction of Additional Spectrum in the 2 GHz Frequency Range

Canada

Aussi disponible en français

Table of Contents

Page

10. Amendments and Supplements and Clarification Questions 1

10.1 General 1

10.2 Certain Rules of Interpretation 1

10.3 Application of the Spectrum Aggregation Limit 2
10.3.1 Affiliates 3
10.3.2 Joint Operating and Marketing Arrangements 4
10.3.3 Applications from Associated Entities to Participate in the Auction 5
10.3.4 Treatment of Spectrum in Excess of the Spectrum Aggregation Limit 6
10.3.5 Spectrum Aggregation Limit Definition 8
10.3.6 Responses to Clarification Questions Related to the Application of the Spectrum Aggregation Limit 8

10.4 Prohibition of Collusion 13
10.4.1 Responses to Clarification Questions Related to the Prohibition of Collusion 15

10.5 Definition of Licences 20
10.5.1 Resale and Roaming 20
10.5.2 Responses to Clarification Questions Related to Resale and Roaming 22
10.5.3 The Transfer of PCS Spectrum Licences and Exchange of PCS Spectrum 26
10.5.4 Responses to Clarification Questions Related to the Transfer of PCS Spectrum Licences and Exchange of PCS Spectrum 28

10.6 Auction Design and Operation 30
10.6.1 Responses to Clarification Questions Related to the Auction Design and Operation 31
10.7 Auction Software 38
10.7.1 Responses to Clarification Questions Related to Auction Software 38

10.8 Process and Procedural Questions 41
10.8.1 Responses to Clarification Questions Related to Process and Procedural Questions 41

Appendix 4 (Revised, October 2000) - Application to Participate in the Auction of Additional PCS Spectrum in the 2 GHz Frequency Range 65

Appendix 9 - (New, October 2000) Spectrum Holdings Declaration Form 69

10. Amendments and Supplements and Clarification Questions

10.1 General

In accordance with section 6.6 of the *Policy and Licensing Procedures for the Auction of Additional Spectrum in the 2 GHz Frequency Range ("the Policy")*, the following clarifies and amends the Policy issued on June 28, 2000. These amendments and supplements also include the Department's responses to the clarification questions which were submitted prior to the August 11, 2000 deadline.

For convenience, these amendments and supplements have been formatted to be considered as section 10 of the Policy. The text has been organized around the following themes:

- Certain Rules of Interpretation
- Application of the Spectrum Aggregation Limit
- Prohibition of Collusion
- Definition of Licences
- Auction Design and Operation
- Auction Software
- Process and Procedural Questions

10.2 Certain Rules of Interpretation

In the Policy:

(a) **Currency** – unless otherwise specified, all references to money amounts are in Canadian currency;

(b) **Headings** – the descriptive headings of articles and sections are inserted solely for convenience of reference and are not intended as complete or accurate descriptions of content and shall not be used to interpret the provisions of the Policy;

(c) **Singular, etc.** – the use of words in the singular or plural, or with a particular gender, shall not limit the scope or exclude the application of any provision of the Policy to such person or persons or circumstances as the context otherwise permits;

(d) **Calculation of Time** – unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day which ends the period and by extending the period to the next Business Day following if the last day of the period is not a Business Day;

(e) **Business Day** – means a day other than a Saturday, Sunday or statutory holiday.

10.3 Application of the Spectrum Aggregation Limit

To ensure a competitive marketplace in the provision of PCS services and to further the PCS policy objectives, the Department established a limit on the amount of PCS and similar specified spectrum any PCS licensee can hold in a given geographic area. This spectrum aggregation limit is set at 55 MHz. In the Policy and in the Radio Systems Policy 021 (RP-021), *Revision to the PCS Spectrum Cap and Timing for Licensing Additional PCS Spectrum*, the relationships captured by the application of the spectrum aggregation limit are outlined. According to section 3.3 of the Policy, any existing PCS licensee is eligible to hold radio licences covering, in any geographical area, frequency assignments aggregating up to a total of 55 MHz of spectrum for a PCS, cellular radiotelephony and similar high mobility spectrum. This aggregation limit of 55 MHz will continue to apply for bidders in this auction and will consist of:

(a) spectrum within the PCS band 1850-1990 MHz;

(b) other spectrum that may be identified for PCS in subsequent proceedings;

(c) spectrum licensed for cellular mobile radiotelephony services, and for similar public high-mobility radiotelephony services, other than air-to-ground telephony and mobile-satellite services;

(d) spectrum as defined in (a), (b) and (c) above that is licensed to any affiliate of the entity; and

(e) spectrum as defined in (a), (b) and (c) above that is licensed to any other entity which has an operating and/or marketing arrangement with the subject entity (or with any of its affiliates), in the same geographical area, for the provision of uniformly branded or jointly offered telecommunications services.

In the Policy, the Department further outlines the importance of enforcing the spectrum aggregation limit during the auction and post-auction by imposing substantial penalties on bidders who exceed the spectrum aggregation limit. These penalties are outlined in sections 7.10 and 8.5.

For convenience, all entities who have relationships that are captured by the spectrum aggregation limit, including affiliates and joint operating or marketing arrangements, will be referred to herein as "Associated Entities" and the relationship will be referred to as an "Association". All sections in the Policy making reference to the application and enforcement of

the spectrum aggregation limit and any associated penalties are hereby amended to include all Association relationships as defined herein[1]. Further, as outlined in section 10.4 of this document, the exceptions from the prohibition of collusion have been expanded to allow for communications between Associated Entities subject to the provisions of the *Competition Act*.

10.3.1 Affiliates

As outlined above, section 3.3 of the Policy clearly indicates that affiliates are subject jointly to the application of the spectrum aggregation limit. "Affiliate" is defined as a person who controls the entity, or who is controlled by the entity or by any person who controls the entity. "Control" means control in any manner that results in control in fact, whether directly through the ownership of securities or indirectly through a trust, agreement or arrangement, the ownership of a body corporate or otherwise. Furthermore, the Policy outlines that if a person owns, directly or indirectly, at least 20% of the entity's voting shares where the entity is a body corporate or where the entity is not a body corporate, at least 20% of the beneficial ownership in such entity, this will result in a rebuttable presumption that the person controls the entity.

Several of the submitted questions seek clarification on how the control in fact test is conducted. The Department hereby clarifies that control in fact is the ongoing power or ability, whether exercised or not, to determine or decide the strategic decision-making activities of an enterprise or to manage or run the day-to-day operations of an enterprise. In those cases where materials have been filed to rebut a presumption of affiliate status, Industry Canada will apply a control in fact test in determining whether or not the entity has satisfactorily demonstrated that it is not affiliated with the other entity. Such determinations are done on a case-by-case basis. In making its determination, Industry Canada will generally request and review the type of information listed at Appendix 8 of the Policy, Declaration of Ownership and Control. The Department reserves the right to request additional information. For example, the Department will require the entity to submit the following types of documentation for it and any related holding company: the incorporation documents, bylaws, details of shareholdings, shareholder agreements, details related to the election of directors and appointment of officers of the company, complete details on the financial structure of the company, information regarding relationships between the parties, as well as copies of any agreements or arrangements which could affect whether the company or any related holding company are, or are not, controlled by another entity.

A person may attempt to rebut the Department's presumption of an affiliate relationship by submitting an affidavit or declaration, signed by an officer or other appropriate official, which sets out the specific ownership holdings of any person with a 20% or greater holding in the entity

---

[1] For example, the penalties outlined in sections 7.10 and 8.5 of the Policy should now be considered to be calculated based on the new bids, standing high bids and the spectrum holdings of the entity combined with the spectrum holdings of any Associated Entity.

and which affirms that the person does not control the entity and sets out the reasons as to why the person does not control the entity. A copy of this affidavit or declaration will be made public. Such an affidavit or declaration must also be accompanied by supporting documentation as well as copies of all arrangements, agreements, or understandings between the subject entities. The Department reserves the right to request additional information in order to make its determination. Should the entities fail to file materials to rebut the presumption or fail to provide all the relevant information in a timely fashion to allow the Department to complete its determination, or if the Department is not satisfied five Business Days prior to the date set for the mock auction, that the presumption has been rebutted successfully, then the presumption will stand and only one entity may participate in the auction in accordance with section 10.3.3 below.

10.3.2 Joint Operating and Marketing Arrangements

Several questions submitted in accordance with section 6.6 of the Policy seek clarification on the application of the spectrum aggregation limit to those entities outlined in section 3.3(e), or, more specifically, those entities or their affiliates which have operating and/or marketing arrangements for the provision of uniformly branded or jointly offered telecommunications services. Further, several questions were raised regarding how the Department would treat other relationships such as strategic alliances, joint ventures and bidding consortia with respect to participation in the auction and the application of the spectrum aggregation limit.

Industry Canada considers that compliance with the spectrum aggregation limit is an important element in safeguarding a fair and competitive PCS service provision environment recognizing that there is a very limited number of service providers at this time. Consistent with this position, Industry Canada believes that "any PCS licensee" should have an absolute minimum of arrangements with other PCS licensees by which cooperation in the provision of telecommunications services or in the utilization of the limited amount of PCS or similar spectrum may occur. Accordingly, the Department is strongly inclined to broadly interpret what may constitute a joint operating or marketing arrangement.

The Department hereby clarifies, for the purposes of the Policy and on a going-forward basis, the types of joint operating or marketing arrangements that would create an Association and thus result in the entities being jointly subject to the spectrum aggregation limit. A joint operating or marketing arrangement will be considered to exist if parties come together for the purposes of participating in the auction or if the parties have entered into arrangements or agreements whereby they agree to cooperate, make decisions or otherwise engage in practices or activities that determine, or significantly influence: (i) the nature or types of telecommunication services offered; (ii) the terms upon which such services are offered; or (iii) the prices charged for such services. Thus, for the purposes of participating in the auction, any entities who enter into any partnerships, joint ventures, agreements (including agreements in principle) to merge, consortia or any arrangements, agreements or understandings of any kind, either explicit or implicit,

relating to the licences being auctioned or relating to the post-auction market structure, will be treated as Associated Entities and will be jointly subject to the spectrum aggregation limit.

The existence of such agreements, arrangements or understandings must be disclosed to the Department at the time of application and this information will be disclosed to other bidders and to the public. **Changes which create an Association with another applicant after the application deadline will not be permitted.** Any entity wishing to demonstrate why it should not be treated as an Associated Entity in the presence of such agreements, arrangements or understandings, must, as part of its submission, include evidence and set out the reasons as to why an Association does not exist. Such a submission must include a narrative, which will be made public, outlining the arguments as to why an Association does not exist. Supporting documentation, as well as copies of all arrangements, agreements, or understandings between the subject entities must also be provided to the Department. The Department reserves the right to request additional information in order to make its determination. Should the entities fail to provide all the relevant information in a timely fashion to allow the Department to complete its determination, or if the Department is not satisfied five Business Days prior to the date set for the mock auction that an Association does not exist, then only one of those Associated Entities may participate in the auction in accordance with section 10.3.3 below.

10.3.3 Applications from Associated Entities to Participate in the Auction

During the public information sessions of July 18 – August 2, 2000, for this licensing process Industry Canada provided an interpretation regarding the participation of affiliates in the auction. The position outlined was that only one entity per group of affiliated companies would be permitted to become a qualified bidder and thus participate in the auction. This is based on the principle that only competitors should be permitted to be participants in the auction. Given that Associated Entities are also deemed not to be competitors in the auction, it follows that they too would be represented by a single bidder. Further, allowing Associated Entities to bid separately would pose problems for those entities in terms of respecting the spectrum aggregation limit on a round-by-round basis. Therefore, any Associated Entities who are subject jointly to the spectrum aggregation limit will not be permitted to bid separately. Associated Entities must, therefore, decide prior to the application deadline which entity will apply to participate in the auction in order that only one application is submitted.

If the presumption of affiliate status is being rebutted or the existence of an Association is being disputed, then as outlined in sections 10.3.1 and 10.3.2, evidence must be provided to demonstrate why the entities should not be treated as Associated Entities. Such documentation should be filed as part of the application materials, and in any event, no later than five Business Days after the publication of the list of applicants. During the review of any information submitted demonstrating why an Association does not exist, the Department will proceed with the qualification of each individual bidder's application so that in the event that the entities are

found not to be Associated, there is no additional delay.

If the entities fail to demonstrate why an Association does not exist five Business Days prior to the date set for the mock auction, then the entities will be jointly subject to the spectrum aggregation limit and only one entity will become a qualified bidder. When notifying the entities of this fact, the Department will provide the entities a period of two days within which to notify the Department which one of them, but not more than one, is to participate in the auction. If the entities fail to notify the Department within the period specified, then the Department will qualify only the bidder that otherwise satisfies all bidder qualifications and that submitted the largest financial deposit and will calculate the number of eligibility points awarded based on the combined spectrum holdings of all Associated Entities. Bidders may be provided an opportunity to submit a replacement letter of credit to reflect the number of eligibility points awarded.

10.3.4 Treatment of Spectrum in Excess of the Spectrum Aggregation Limit

Since August 11, 2000, (the date for submission of questions seeking clarification on the document *Policy and Licensing Procedures for the Auction of Additional PCS Spectrum in the 2 GHz Frequency Range*) an agreement has been announced in terms of which one existing PCS licensee would assume control of another existing PCS licensee, with the result that the entities together would hold authorizations in excess of the spectrum aggregation limit in certain geographic areas. This has inspired a large number of inquiries and expressions of concern to Industry Canada. Although this development was not the subject of a specific clarification question received as part of this licensing process, several of the received questions raise similar issues. In addition, this, and any similar subsequent development, is of direct material interest to prospective bidders. Accordingly, Industry Canada includes herein a summary of the policies and procedures that apply in such circumstances.

Parties to such an agreement or arrangement will be treated as Associated Entities in accordance with section 10.3.2 of this document and will thus be jointly subject to the spectrum aggregation limit.

Interested parties should note that in the June 1995 *Policy and Call for Applications: Wireless Personal Communications Services in the 2 GHz Range*, section 6.1.1 provides, with respect to the spectrum aggregation limit, that "The aggregation rule will also be observed when the transfer of an ownership interest in a successful applicant is effected." and in section 6.8.3, with respect to the transfer of a PCS authorization, that consistent with general policy in this area "the transfer of an authorization to another party will not be allowed without a full review of the application by Industry Canada and the approval of the Minister." Interested parties should further note that section 40 of the *Radio Regulations* establishes that "The assignment of a frequency or frequencies to a holder of a radio authorization does not confer a monopoly on the

use of the frequency or frequencies, nor shall a radio authorization be construed as conferring any right of continuing tenure in respect of the frequency or frequencies."

Industry Canada considers that the PCS special authorizations issued in 1996 are privileges accorded by the Minister that, as stated therein, authorized the recipients "to provide Personal Communications Services" in the specified frequency blocks. In so doing, and again consistent with the general policy in this area and the specific provisions noted above, no property right was bestowed with respect to the frequency blocks assigned. **Specifically, the PCS special authorizations do not have the enhanced transferability and divisibility privileges accorded in auctioned spectrum licences.** One respondent to the consultation held with respect to the current licensing process requested that the Department provide the same licence term and transferability and divisibility to existing PCS authorizations but, as was specifically noted in section 4.4 of the Policy, the Department has indicated that this may be the subject of a future public consultation. The Department would expect such a future consultation to take into consideration Treasury Board policy that establishes that it is the Canadian public who should earn a fair return for access to, or exploitation of, publicly owned or controlled resources as part of the required transition to a more liberalized regime.

Industry Canada considers that compliance with the spectrum aggregation limit is an important element in safeguarding a fair and competitive PCS service provision environment recognizing that there is a very limited number of service providers at this time. Accordingly, there are very strong penalties, detailed elsewhere in this Policy, applicable to any auction participant having spectrum in excess of the spectrum aggregation limit. Equally, Industry Canada intends to ensure that the spectrum aggregation limit is respected where commercial transactions outside of the auction place licensees in a state of non-compliance and will take the necessary measures, including the commencement of a process to amend the radio authorizations of current licensees, to so ensure.

While there are various means by which parties in excess of the spectrum aggregation limit may come into compliance, the general policy applicable in this area has been, and continues to be, with the exception of licences awarded via auction, that authorizations will only be transferred to the extent that they form a necessary part of the ongoing operation of a radio system and/or business concern. In practice, as is described in the Radio Systems Policy 010 (RP-010), *Policy Guidelines Concerning the Transfer of Radio Licences*, the Department approves transfers only where the spectrum assigned by the radio authorization is being used as part of a radio system providing service to subscribers. Further, the fact that a complement of frequencies is specified on a given authorization gives no assurances that same complement will be automatically transferred with the radio authorization, particularly where frequencies are in short supply. Further, as mentioned above, it is the government's policy that the Canadian public should earn a fair return for access to, or exploitation of, publicly owned or controlled resources.

Should the means executed to come into compliance with the spectrum aggregation limit result in additional PCS spectrum being available for licensing, it would be Industry Canada's intention to include such spectrum in the current auction so as to maximize the possibilities for an economically efficient allocation. Industry Canada will issue a notification to this effect at the earliest opportunity. In the event that such notification occurs within two weeks prior to the date on which applications to participate in the auction are due, the application date will be extended accordingly. In the event that such notification occurs following the submission of applications, it would be Industry Canada's intention to make the spectrum available in a subsequent licensing process to be held in a timely fashion.

In the Policy, applicants have been asked to submit details of their existing spectrum holdings in each of the 14 Tier 2 areas. The Department will verify the information submitted in determining the initial level of eligibility assigned and this information will be posted when the list of qualified bidders is published and will be available to the public on the Department's Web site at http://strategis.ic.gc.ca/spectrum.

10.3.5 Spectrum Aggregation Limit Definition

Section 3.3 of the Policy states that the spectrum aggregation limit includes spectrum used for public high-mobility radiotelephony services. This follows the Department's policy regarding the spectrum aggregation limit ('spectrum cap') outlined in Radio Systems Policy 021 (RP-021) entitled *Revision to the PCS Spectrum Cap and Timing for Licensing Additional PCS Spectrum.* The Policy states that the spectrum aggregation limit includes spectrum used for PCS at 2 GHz and in additional PCS bands, cellular mobile radiotelephony services and similar public high-mobility radiotelephony services. The entire spectrum licensed for PCS in the 2 GHz band and the entire spectrum licensed for cellular mobile radiotelephony services and similar public high-mobility radiotelephony services in the 800 MHz and 400 MHz bands are included in the calculation of the spectrum aggregation, in each of the geographical area which is licensed for such services, whether or not that entire spectrum is actually being used for public high-mobility radiotelephony services.

The Department hereby clarifies that public high-mobility radiotelephony services refer to systems which offer or are intended to offer public services through the deployment of advanced radio equipment that makes use of an aggregation of frequency assignments or specifically allotted spectrum to provide network capabilities, such as wide-area coverage, hand-off, connection to the PSTN, and that approach or exceed the capabilities of the conventional cellular network. The determination of which services are included under this category is not based on the frequencies being used but the services provided.

10.3.6 Responses to Clarification Questions Related to the Application of the Spectrum Aggregation Limit

Question 1:

The Policy Paper states that where one entity owns 20% or more of the voting shares of a second entity, there is a presumption that the two entities are affiliates and therefore only one would be eligible to be a qualified bidder. Each entity may file evidence to rebut that presumption. Clarification is requested as follows:

(a) Will both entities be permitted to participate in the auction pending a determination as to the affiliate relationship?

(b) Assuming that both entities will be permitted to participate, what will be the procedure post-auction should Industry Canada determine that the two entities are in fact affiliates? Is there an appeal from that determination?

(c) Will the issuance of licenses be delayed pending the determination of affiliation? If the entities are declared provisional winners in different territories, will they be permitted to be licensed?

(d) Will the entities, if they are declared provisional winners, be required to pay the fees within the time periods if no determination has yet been made with respect to the affiliate relationship? If so and the ultimate determination is that they are affiliates, will funds be returned, with interest? Will penalties apply in those circumstances?

Answer:

As clarified above in section 10.3.3, only one entity per group of Associated Entities (which includes affiliated companies), is eligible to participate in the auction. The determination of affiliation between two or more applicants will be done prior to the auction commencing, and only one entity would be qualified as a bidder. Fees will be due within the stated time periods, and penalties for exceeding the spectrum aggregation limit will be applied in accordance with the provisions of the Policy.

Question 2:

Further clarification is requested regarding the criteria to be applied by Industry Canada in determining whether a company has satisfactorily rebutted the presumption that it is an affiliate

of a second entity by virtue of that second entity owning 20% of its issued shares. We submit that the following elements be considered in determining "control in fact", namely:

(a) percentage representation on board of directors;

(b) actual control through ownership or control of more than a 50% interest;

(c) agreements which block decision-making;

Please clarify that these are the primary criteria that Industry Canada will consider for purposes of making this determination.

Answer:

The Department hereby clarifies that control in fact is the ongoing power or ability, whether exercised or not, to determine or decide the strategic decision-making activities of an enterprise or to manage or run the day-to-day operations of an enterprise. In those cases where materials have been filed to rebut a presumption of affiliate status, Industry Canada will apply a control in fact test in determining whether or not the entity has satisfactorily demonstrated that it is not affiliated with the other entity. Such determinations are done on a case-by-case basis. In making its determination, Industry Canada will generally request and review the type of information listed at Appendix 8 of the Policy, Declaration of Ownership and Control. The Department reserves the right to request additional information. For example, the Department will require the entity to submit the following types of documentation for it and any related holding company: the incorporation documents, bylaws, details of shareholdings, shareholder agreements, details related to the election of directors and appointment of officers of the company, complete details on the financial structure of the company, information regarding relationships between the parties, as well as copies of any agreements or arrangements which could affect whether the company or any related holding company are, or are not, controlled by another entity.

The following questions are closely related and will be answered together.

Question 3:

Are entities described in section 3.3(e) of the Policy to be considered "affiliates" for purposes of section 6.5 of the Policy?

Question 4:

As well, please clarify that section 3.3(e) of the Policy will be applied only to determine the spectrum aggregation limits of entities with arrangements as described and is not considered in determining whether entities are "affiliates" for bidding/licensing purposes.

Question 5:

Please confirm our understanding that Industry Canada will not entertain separate bids from affiliates, or separate bids from entities that are not affiliates but which are defined under section 3.3(e) of the Policy, for licenses for the same service area?

Question 6:

Please confirm that section 3.3(e) of the PCS – 2GHz Policy and Licensing Procedures is intended to apply the spectrum aggregation limit of 55 MHz to the regional spectrum holdings of members of the Bell Mobility Alliance (i.e. SaskTel Mobility, Bell Mobility, MTS Mobility and the Alliant companies).

Answer:

As clarified above in section 10.3.2, those entities or their affiliates which have operating and/or marketing arrangements for the provision of uniformly branded or jointly offered telecommunications services will be considered as Associated Entities. As such, they will be jointly subject to the spectrum aggregation limit and only one of those Associated Entities will be able to become a qualified bidder in accordance with section 10.3.3.

Question 7:

Will Industry Canada apply the spectrum aggregation limits to a bidding consortium? In particular, suppose that firms X and Y announce to Industry Canada an agreement to bid jointly at the auction. The firms are neither affiliates nor commercial partners. If firm X already holds PCS spectrum of 30 MHz in region A, can the bidding consortium bid on all 40 MHz of spectrum in region A as long as the ultimate licensee of the license in region A is firm Y?

Answer:

As clarified in section 10.3.2, any parties coming together for the purposes of participating in the auction will be jointly subject to the spectrum aggregation limit. Thus, for the purposes of participating in the auction, any entities who enter into any partnerships, joint ventures,

agreements (including agreements in principle) to merge, consortia or any arrangements, agreements or understandings of any kind, either explicit or implicit, relating to the licences being auctioned or relating to the post-auction market structure, will be treated as Associated Entities and will be jointly subject to the spectrum aggregation limit and only one of those Associated Entities will be able to become a qualified bidder in accordance with section 10.3.3.

Further, the spectrum aggregation limit is enforced on an ongoing basis and as such, the spectrum holdings of each Associated Entity would be captured in the application of the penalties related to the enforcement of the spectrum aggregation limit. Therefore, in the example above, if firm X already holds PCS spectrum of 30 MHz in region A, then the qualified bidder for the bidding consortium is only permitted to bid on spectrum up to the spectrum aggregation limit. Since the spectrum available in the auction is only in 10 MHz blocks, this would mean, regardless of who the ultimate licensee of the licence in region A would be, the bidding consortium could only bid on 20 MHz of spectrum in region A without incurring penalties related to exceeding the spectrum aggregation limit.

Question 8:

Clarification is requested with respect to subparagraph 3.3(e) of the Policy - Spectrum Aggregation Limits as follows:

(a) Provide an explanation as to the meaning "an operating and/or marketing arrangement for the provision of uniformly branded or jointly offered telecommunications services" and how this will be applied in the determination of the spectrum aggregation limit.

(b) Confirm that the trunked radio in the 800 MHz spectrum will be excluded from the aggregation for purposes of the 2 GHz auction (as it is excluded from the 55 MHz spectrum cap).

Answer:

The meaning of "an operating and/or marketing arrangement for the provision of uniformly branded or jointly offered telecommunications services" is provided in section 10.3.2. Should an applicant have such arrangements, the high-mobility spectrum holdings of all the entities that are party to the arrangement will be included in the determination of the applicant's spectrum aggregation limit in each of the 14 service areas of the auction.

Trunked radio systems which use an aggregation of frequency assignments to offer primarily local dispatch service, with no hand-off capability, are **NOT** considered to be providing a public

high-mobility radiotelephony service and so are not considered under the spectrum aggregation limit. These systems may operate in a number of mobile frequency bands including the 150 MHz, 450 MHz, 800 MHz and 900 MHz range. Enhanced Specialized Mobile Radio (ESMR) systems, which offer or are intended to offer public high-mobility radiotelephony services, are included under the calculation of the spectrum aggregation. ESMR systems currently operate in the 400 MHz and 800 MHz bands.

Question 9:

In section 3.3 of the Policy it states in subsection (c) "spectrum licensed for cellular mobile radiotelephony services, and for similar public high-mobile radiotelephony services, other than air-to-ground telephony and mobile-satellite services;". Will the Department please list the specific services they had in mind within "similar high-mobile radiotelephony services"? Also please provide the Department's definition of "similar high-mobile radiotelephony services".

Answer:

Public high-mobility radiotelephony services refer to systems which offer or are intended to offer public services through the deployment of advanced radio equipment that makes use of an aggregation of frequency assignments or specifically allotted spectrum to provide network capabilities, such as wide-area coverage, hand-off, connection to the PSTN, and that approach or exceed the capabilities of the conventional cellular network. ESMR systems are considered to be providing such services and are therefore considered public high-mobility radiotelephony services as are cellular mobile radiotelephony and PCS. Applicants are also referred to section 10.3.5.

Question 10:

Please confirm our understanding that a Trunk Mobile Radio network which is not configured for PSTN connectivity and which is configured in closed user group applications, would not be considered for the purposes of the spectrum aggregation limits.

Answer:

As indicated in section 10.3.5, trunked radio systems which use an aggregation of frequency assignments to offer primarily local dispatch service, with no hand-off capability, are **NOT** considered to be providing a public high-mobility radiotelephony service and so are not considered under the spectrum aggregation limit. These systems may operate in a number of mobile frequency bands including the 150 MHz, 450 MHz, 800 MHz and 900 MHz range.

Enhanced Specialized Mobile Radio (ESMR) systems, which offer or are intended to offer public high-mobility radiotelephony services, are included under the calculation of the spectrum aggregation. ESMR systems currently operate in the 400 MHz and 800 MHz bands.

10.4 Prohibition of Collusion

To safeguard a fair and competitive auction and marketplace, the Department includes provisions in section 6.5 of the Policy which prohibit collusive behaviour. A number of questions related to section 6.5 of the Policy were submitted for clarification. These questions hinge on whether section 6.5 of the Policy would be contravened in the case of particular arrangements and how such arrangements would be treated under the *Competition Act.* The text that follows clarifies the Department's position on the prohibition of collusion.

The provisions of the *Competition Act* apply independently of, and in addition to, the provisions of the Policy.

In section 6.5, the term competitor is clarified to mean any entity, other than the applicant or any Associated Entity, who could potentially be a bidder in the auction based on its qualifications, abilities or experience. This text has also been changed in Part 5 of the application form to participate in the auction and, as such, a new application form has been attached to these amendments and supplements. Prospective bidders are asked to note that "affiliate" for the purposes of the Policy (defined by reference to control in fact) differs from the definition of "affiliate" for the purposes of the *Competition Act*. For this reason, a bidder who enters into an agreement or arrangement with any one or more of its affiliates may have to make the agreement or arrangement known to the Department at or before the time that any application to participate in the auction is made in order to avoid contravening section 47 of the *Competition Act*.

This requirement to disclose agreements or arrangements to the Department applies equally to any agreements or arrangements arrived at by other Associated Entities. Therefore, as part of the application, prospective bidders must document and disclose to the Department any partnerships, joint ventures, consortia or other arrangements or understandings of any kind relating to licences being auctioned, or relating to the post-auction market structure.

Further, in the interest of providing both the Department and other bidders with adequate information on the identity of all bidders, applicants are required to fully disclose the beneficial ownership for every entity that owns, directly or indirectly, 10% or more of the applicant's voting shares, non-voting shares, partnership interests, or any other beneficial interests, as the case may be. The Department will make this information available to the public so that all bidders have knowledge of the real identity of the other bidders. This information will be used, along with

other documentation submitted by applicants, to determine the type of relationship, if any, that may exist between entities.

After the deadline for submission of applications, applicants are prohibited from cooperating, collaborating, discussing or negotiating settlement agreements with competitors, relating to the licences being auctioned or relating to the post-auction market structure, until the deadline for the final payment on high bids.

It should be noted that during the Department's review of the materials filed to rebut the presumption of affiliate status or to dispute the existence of an Association, the entities will be considered to be competitors and will be subject to the prohibition of collusion rules outlined above.

10.4.1 Responses to Clarification Questions Related to the Prohibition of Collusion

Question 11:

Assuming they would otherwise comply with sections 45 and 47 of the Competition Act, will strategic alliances, among two or more entities formed for the purpose of submitting bids in the spectrum auction which are identified as such in the completed application form (section 7 of Appendix 4 of the Policy), contravene section 6.5 of the Policy?

Answer:

Section 6.5 of the Policy will not be contravened where the agreement or arrangement is between entities who are not "competitors". A competitor is defined for the purposes of the Policy and as clarified in section 10.4 of these amendments and supplements as: "any entity, other than the applicant or any Associated Entity, who could potentially be a bidder in this auction based on its qualifications, abilities or experience."

A strategic alliance between affiliates will therefore not contravene section 6.5. For example, two or more entities may structure their holdings and voting rights in a corporate applicant in such a way that the applicant and all of those parent entities are affiliates. Those affiliates can then enter into agreements or arrangements with each other without breaching section 6.5 of the Policy (although parties should note that they must still comply with the *Competition Act*).

Apart from the exclusion of Associated Entities, the definition of competitor is fairly broad, and will be interpreted broadly by the Department. Nevertheless, where a strategic alliance is made with an entity that is not a "competitor", section 6.5 will not be contravened.

The three particular matters that are prohibited by section 6.5 which apply to competitors also apply in the case of a strategic alliance. In the Policy, these are stated as: "agreements or arrangements of any kind with any competitor regarding the amount to be bid, bidding strategies, or the particular licence(s) on which the applicant or competitors will or will not bid."

A strategic alliance (whether oral or written) would constitute an "agreement or arrangement", but where it does not deal explicitly or implicitly with any of the three listed matters, then section 6.5 will not be contravened. Parties should be aware that an alliance between two competitors followed either by only one of those entities bidding in the auction, or by both entities bidding in the auction but on complementary licences, would be construed, prima facie, as an agreement or arrangement regarding particular licences on which the entities will not bid.

Question 12:

Will such strategic alliances among two or more entities formed for the purpose of submitting bids in the spectrum auction after the submission of applications on August 28 but before the bidding in the auction commences contravene section 6.5 of the Policy? If they are allowed, would there be any conditions?

Answer:

The formation of strategic alliances between competitors for the purpose of submitting bids in the spectrum auction is not permitted after the application deadline (see section 10.3.2).

Question 13:

If a party has an option to buy all or part of licence from another party through an agreement made prior to the auction to operate a licence jointly,

(a) Does this need to be disclosed to the Department submitting the application?

(b) If so, would such an agreement be disclosed to other bidders and/or made public?

(c) Would such agreements fall foul of the rules prohibiting collusion?

Answer:

(a) Any option acquired prior to the application held by one entity to buy all or any part of a licence from another entity must be disclosed to the Department along the lines of "full disclosure" and may create an Association as outlined in section 10.3.2.

(b) Such an agreement will be disclosed to other bidders and made public at the time that the list of qualified bidders is posted on the Department's Web site and in the same manner that is used to publish beneficial ownership information.

(c) Such an agreement may have the effect of creating an Association between the entities involved in the agreement, in which case the entities will not be competitors as defined by the prohibition of collusion. Bidders are reminded however, that the provisions of the *Competition Act* apply independently of, and in addition to, the provisions of the Policy.

Question 14:

If parties who are not affiliates made agreements prior to the auction to operate a licence jointly:

1. *Do these need to be disclosed to the Department when applying?*

2. *If so, would such agreement be disclosed to other bidders and/or made public; and when would the disclosure take place?*

3. *Would such agreements fall foul of the rules prohibiting collusion?*

Answer:

1. Any agreements between entities to operate licences jointly must be disclosed at the time of application to participate in the auction.

2. Such an agreement will be disclosed to other bidders and made public at the time that the list of qualified bidders is posted on the Department's Web site and in the same manner that is used to publish beneficial ownership information.

3. Such an agreement may have the effect of creating an Association between the entities involved in the agreement, in which case the entities will not be competitors as defined by the prohibition of collusion. Bidders are reminded, however, that the provisions of the *Competition Act* apply independently of, and in addition to, the provisions of the Policy.

Question 15:

Does the prohibition of collusion rule in section 6.5 prohibit agreements or arrangements between parties with regard to which parties will participate in the auction where these are:

(a) Undertaken prior to application?

(b) Undertaken after application, but prior to the auction?

Answer:

As outlined in section 10.3.2 of this document, agreements or arrangements between parties with regard to which parties will participate in the auction, undertaken prior to the application deadline, will result in the parties being treated as Associated Entities, in which case such entities would be exempt from the rules prohibiting collusion. Such agreements must be disclosed to the Department at the time of application.

As outlined in section 10.3.2 of this document, agreements or arrangements between parties with regard to which parties will participate in the auction, undertaken after the application deadline, will not be permitted.

Question 16:

What implications does section 47 of the Competition Act have for the auction process?

(a) Are there agreements that are permissible under the anti-collusion rules, but which require notification under the terms of the Competition Act?

(b) If so, identify what is permissible.

Answer:

As indicated in section 10.4 of this document, the provisions of the *Competition Act* apply

independently of, and in addition to, the provisions of the Policy. As such, where an arrangement or agreement is caught by subsection 47(1) of the *Competition Act*, and is not exempted by subsection 47(3) by reason of the arrangement or agreement being between corporations that are affiliates of one another, notification under the *Competition Act* will be required. Parties should note that, with respect to corporations, "affiliate" is defined in the *Competition Act* by reference to *de jure* control, whereas "affiliate" for the purposes of the Policy is determined by reference to *de facto* control (or control in fact). As such, an agreement or arrangement that may be permissible under the anti-collusion rules of the Policy by reason of being between affiliates (as determined by reference to control in fact), may still require notification under the *Competition Act* where those parties would not be considered "affiliates" under the *Competition Act.*

The anti-collusion rules of the Policy permit agreements or arrangements regarding the amount to be bid, bidding strategies, or the particular licence(s) on which the applicant or competitors will or will not bid provided those agreements or arrangements are between entities that are Associated Entities.

Question 17:

If a bidder agrees to offer another actual or potential bidder access to its network or spectrum that it may obtain during the auction, would such an agreement be prohibited by the anti-collusion rules instruction 6.5?

Answer:

Such an agreement is not prohibited by the rules prohibiting collusion as long as it is fully disclosed to the Department at the time of application. No such agreement is permitted to be made from the time that applications are submitted until after the deadline for final payments on licences won during the auction. Such an agreement may result in an Association between entities, in which event the entities involved would be exempt from the prohibition of collusion rules and only one entity would be permitted to participate in the auction.

Question 18:

Please confirm that bidders may sell buy options or buy sell options on a particular license, even before the licenses are awarded.

(a) If yes, would any such agreement need to be disclosed to Industry Canada?

(b) Would such information be made available to all bidders, and if so when would the information be disclosed to those bidders?

(c) Identify whether any such agreement if made between two bidders, is contrary to rules prohibiting collusion.

Answer:

Bidders may sell buy options or buy sell options on a particular licence prior to the application date for participation in the auction. No such arrangements may be struck from the time applications are submitted until after final payments for licences are made.

(a) Such an agreement must be disclosed to the Department.

(b) Such an agreement will be disclosed to other bidders and made public at the time that the list of qualified bidders is posted on the Department's Web site and in the same manner that is used to publish beneficial ownership information.

(c) This type of agreement may create an Association between the entities involved, in which case these entities would be exempt from the rules prohibiting collusion.

Question 19:

Would an applicant be at risk of disqualification if it worked with competitors to form a bidding consortium assuming no violation of sections 45 and 47 of the Competition Act?

Answer:

If entities who are competitors formed a bidding consortium, such an arrangement would be seen as resulting in an Association between the entities and only one of the entities would be permitted to submit bids during the auction. Such an arrangement or agreement must be disclosed to the Department at the time of the application.

10.5 Definition of Licences

The authorizations available for assignment are spectrum licences that are defined in subparagraph 5(1)*(a)*(i.1) of the *Radiocommunication Act*. The following section clarifies some of the attributes of the spectrum licences for the auction of the additional PCS spectrum in the 2 GHz frequency range.

10.5.1 Resale and Roaming

Section 4.7.3, Resale and Roaming, of the Policy states that the Department will extend the obligations of the existing PCS and cellular licensees, under their existing conditions of licence, to provide for the resale and roaming of cellular and PCS services to the licensees of this licensing process. The intent of this Policy statement is to extend the obligations on the existing PCS licensees relating to analogue cellular resale, analogue cellular roaming, and PCS resale, outlined in the PCS special authorization dated April 15, 1996[2].

Under these obligations, PCS licensees who are also cellular licensees are required to offer to the PCS licensees in this licensing process, analogue cellular resale and analogue cellular roaming. All PCS licensees, including those in this licensing process, must offer PCS resale to the other PCS licensees. These commercial arrangements are to be done on a non-discriminatory basis and the conditions of licence apply to those licensed areas which are common to the parties of any such arrangement.

Thus, section 4.7.3, Resale and Roaming, is hereby amended to read:

> Hence, the Department will extend the obligations of the existing PCS licensees who are also cellular licensees (PCS/cellular licensees) to offer analogue cellular resale and analogue cellular roaming through commercial arrangements to the licensees in this licensing process. The Department will also extend the obligation of the existing PCS licensees to offer PCS resale through commercial arrangements to the licensees in this licensing process. For the licences awarded in this auction, the Department will also require by means of a condition of licence, the requirement to provide PCS resale to other PCS licensees on a non-discriminatory basis.

The Department believes that the 1995 conditions of licence as outlined above will provide sufficient assistance to the licensees of this licensing process to offer services to their customers in their specific licensed service areas(s) during their network construction phase. The Department notes, in this regard, that in a number of cases cellular and PCS licensees have gone beyond the requirements of the conditions of licence in offering their services to others for resale and/or roaming. It further notes that the CRTC has retained oversight under section 27(2) of the *Telecommunications Act* with respect to public switched mobile voice services.

---

[2] For the full text of the existing conditions of licence, please refer to conditions 8.3, 8.4 and 9.1 available at: http://strategis.ic.gc.ca/SSG/sf01785e.html.

It is important to note that it is government policy to support resale and access to network facilities by third parties, to the extent practicable, as stated in the Order in Council P.C. 1994-1689 and confirmed in the *Convergence Policy Statement* of August 1996. As well, one of the objectives of section 7 of the *Telecommunications Act* is to foster increased reliance on market forces for the provision of telecommunication services and to ensure that regulation, where required, is efficient and effective.

It is also important to note that conditions of licence for the existing PCS licensees and for the PCS licensees of this proceeding are without prejudice to decisions and actions of the CRTC on associated matters.

The licensees in this licensing process are required to expeditiously build their networks as outlined in section 4.7.1 of the Policy and, where they have network coverage, the PCS and PCS/cellular licensees are required to offer their services, as outlined above.

The Department will not prescribe or limit the types of services to be offered in the resale of PCS and expects that services which a PCS licensee offers to the public will be available for resale to other PCS licensees. In other words, PCS licensees will have access to the services offered to the public by other PCS licensees, through resale arrangements. The Department will not define further the scope of these commercial arrangements for resale and roaming of analogue cellular service nor for the commercial arrangements for resale of PCS service.

The Department is aware of the interest generated by the obligations for resale and roaming and has indicated in the Policy, section 3.5, Future Licensing Processes for PCS Spectrum, that it will re-evaluate a number of policy issues through public consultation. This will include, among others, aspects of resale and roaming.

10.5.2 Responses to Clarification Questions Related to Resale and Roaming

The following questions are closely related and will be answered together.

Question 20:

Reference Item 4.7.3 on page 16. It is stated that "Hence, the Department will extend the obligations of the existing PCS and cellular licensees, under their existing conditions of license, to provide for the resale and roaming of cellular and PCS services to the licensees of this licensing process." With respect to this statement, please confirm that the condition of license for existing cellular licensees applies only to cellular analogue roaming, and that PCS roaming is not a condition.

Question 21:

Reference Item 4.7.3 on page 16. Please advise whether it will be possible for a party that is a successful bidder in only one service area, to request and receive;

(a) analogue roaming from a cellular licensee in some or all of the 14 service areas, and

(b) PCS resale from an existing PCS licensee in some or all of the 14 service areas.

Question 22:

With respect to section 4.7.3 of the Policy – Resale and Roaming – clarification is requested as follows:

(a) Confirm that resale requirements only apply to those areas within a service area where a winning bidder actually offers PCS service to customers. In other words, there is no intent to obligate winning bidders to provide service throughout a particular service area in order to make resale available.

(b) Does non-discriminatory resale include roaming or is the roaming requirement strictly related to existing PCS and related high mobile services?

(c) Does the resale condition apply only in territories in which a licensee is licensed?

Question 23:

The procedures appear to require that licensees must provide PCS resale and roaming to other PCS licensees on a non-discriminatory basis. Do the procedures intend that a licensee must provide PCS resale and roaming or that if a licensee provides PCS resale or roaming that it must do so in a non-discriminatory manner?

Answer:

The Department is extending the obligations of the existing PCS licensees, who are also cellular licensees, to offer to the PCS licensees in this licensing process, analogue cellular resale and analogue cellular roaming. All PCS licensees, including those in this licensing process, must offer PCS resale to the other PCS licensees.

The Department's conditions of licence on resale and/or roaming apply to PCS licensees and to the licensed area(s) which are common to the licensees, and are based on commercial arrangements done in a non-discriminatory basis. However, we note that in a number of cases cellular and PCS licensees have gone beyond these requirements in offering services to others for resale and/or roaming. The Department believes these conditions of licence provide sufficient assistance to PCS licensees in extending service coverage to their customers during their network construction phase. We note that the CRTC has retained oversight under section 27(2) of the *Telecommunications Act* with respect to public switched mobile voice services. It is expected that a wider range of opportunities and arrangements than what is provided by the conditions of licence will be offered among the licensees.

Question 24:

Section 4.7.3 of "Policy and Licensing Procedures for the Auction of Additional PCS Spectrum in the 2 GHz range" discusses the requirement for incumbents and new entrants to provide roaming and resale of services to other wireless licensees:

> *Some respondents asked that a condition of licence be imposed to require roaming and resale. As part of the authorizations for the PCS spectrum assigned in 1995, conditions of licence were imposed requiring resale among PCS licensees and resale and roaming among cellular licensees and PCS licensees. The Department is of the view that these requirements have been instrumental in advancing national services. Hence, the Department will extend the obligations of the existing PCS and cellular licensees, under their existing conditions of licence, to provide for the resale and roaming of cellular and PCS services to the licensees of this licensing process.* ***For the licences awarded in this auction, the Department will also require by means of a condition of licence, the requirement to provide PCS resale to other PCS licensees on a non-discriminatory basis.*** *(Emphasis in original).*

Please provide clarification of whether data services would come under the resale/roaming requirement. In other words, will wireless carriers be required to allow wireless data subscribers belonging to other licensees to roam seamlessly on their networks?

Answer:

All public service offerings of PCS licensees are to be available through resale to the other PCS licensees. However, the Department is of the view that seamless roaming by subscribers between networks providing different services is a function of the technical and commercial arrangements struck between PCS network operators and is not inherent in the resale requirements of the PCS licence conditions.

The Department observes that since 1995, the PCS licensees have reached various commercial and operational arrangements on resale and access to services without the intervention of the Department.

We also note that the CRTC has recently approved the tariffs of some PCS licensees to operate as Competitive Local Exchange Carriers (CLECs), which includes interconnection tariffs with Wireless Service Providers (WSPs). This may be of interest to prospective auction participants, other PCS licensees and their customers.

Question 25:

When the first four PCS blocks were licensed in 1995, Industry Canada established a "head-start rule", which stipulated that the incumbents could not deploy within the PCS spectrum until some time after they finalized roaming/resale agreements with the new entrants.

(a) Please confirm whether this rule will be in place in this round of licensing.

(b) If the answer to the above is "no", please confirm exactly what measures Industry Canada will take to ensure that the incumbents provide the access facilities required for seamless voice and data roaming on reasonable terms and in a timely manner.

Specifically, what process will be followed in the event that a new entrant is unable to come to terms with any of the incumbents and at what point will this process be triggered?

Answer:

The Department concluded from the public consultation process that it would not be in the public interest to delay access to the new spectrum by existing licensees, and so the Department will not impose a "head start rule". Present circumstances differ substantially from those surrounding the licensing of PCS in 1995, e.g. over 2 million PCS subscribers, four national networks. The Department also recognizes the pressing requirements for spectrum to address congestion and market demand.

See answer to Question 24 regarding access to facilities to provide seamless roaming.

The Department expects all licensees to be in compliance with their conditions of licence. The Department has elaborated in section 3.4, Licence Compliance, on how it intends to proceed with licence compliance.

Question 26:

In section 4.7.3 of the Policy it states "Hence, the Department will extend the obligations of the existing PCS and cellular licensees, under their existing conditions of licence, to provide for the resale and roaming of cellular and PCS services to the licensees of this licensing process". Will the Department;

(a) Provide their definition of resale and any specific obligations the Department has in mind?

(b) Outline the present resale obligations of current "PCS licensees" and outline if these differ from those imposed on "cellular licensees and PCS licensees"?

(c) Provide their definition of roaming and any specific obligations the Department has in mind?

(d) Confirm that these requirements are a new condition of licence for all current incumbents, or if not, outline to which incumbents specific requirements apply?

(e) Outline the terms and conditions the Department has in mind, for the licences awarded in this auction, for the provision of "PCS resale to other PCS licensees on a non-discriminatory basis"? Are there differences between these conditions if an incumbent licensee obtains the licence as opposed to a new entrant? If so what are the differences?

Answer:

The intent of section 4.7.3 is to extend the obligations of the existing PCS licensees, as outlined in the PCS special authorizations dated April 15, 1996, to offer **analogue cellular resale, analogue cellular roaming** and **PCS resale** to the licensees in this licensing process. Under these obligations, PCS licensees who are also cellular licensees are required to offer to the PCS licensees in this licensing process, analogue cellular resale and analogue cellular roaming. The Department does not consider these requirements to be new conditions of licence on existing PCS/cellular licensees, but rather an interpretation that "PCS licensees" in their existing conditions of licence includes the PCS licensees of this licensing process as well.

All PCS licensees, including those in this licensing process, must offer PCS resale to the other PCS licensees. The Department does not find it necessary to define further the scope of commercial arrangements for resale and roaming of analogue cellular services nor will it define further the scope of commercial arrangements for resale of PCS services. Since these conditions of licence came into force, PCS licensees have, and continue to, develop commercial arrangements to extend coverage and benefit customers.

10.5.3 The Transfer of PCS Spectrum Licences and Exchange of PCS Spectrum

In the PCS auction Policy, the Department stated in section 4.4, Licence Transferability and Divisibility, that it would be favourably disposed to requests for any post-auction spectrum transfers needed to rationalize the holdings of all PCS licensees in order to improve spectral efficiency. The transfer of a spectrum licence acquired in the auction or the rationalization of spectrum associated with the special authorizations issued to the existing PCS licensees must be considered in light of their respective conditions.

Non-compliance with the conditions of a spectrum licence or special authorization may result in suspension or revocation of that licence or authorization. These conditions include but are not limited to the term of the licence or authorization, technical standards, band plans, specific requirements for international and domestic coordination, lawful interception capabilities, research and development, implementation of service and deployment of networks within certain time frames, and geographical areas of operation. These conditions are instrumental to the fulfilment of the Minister of Industry's responsibility under the *Radiocommunication Act* to ensure the orderly development and efficient operation of radiocommunication in Canada and in meeting some of the objectives set out in section 7 of the *Telecommunications Act*.

The PCS spectrum licences for frequency blocks C1, C2, C3 and E that are being made available in the auction have 15 proposed conditions of licence. These are outlined in section 9 of the Policy. The special authorizations issued for the PCS spectrum in frequency blocks A, B, D and F have 11 conditions. Both sets of conditions have a condition regarding the implementation of service and deployment of networks. For the spectrum licences in this auction, the implementation condition in section 9.14 of the Policy states:

> Within five years of the auction's close, the licensee must demonstrate to the Department that the spectrum has been put into use. The establishment of coverage to 50% of the population within the licensed service area, or some other indicator of usage that is acceptable to the Department, will be required. Supporting documentation should be submitted to the Manager, Wireless Networks, Radiocommunications and Broadcasting Regulatory Branch at the address provided below.

The special authorization, dated April 15, 1996, issued to the PCS licensees provides the implementation condition of licence. This states:

> In order to realize the Government's objective of full national coverage, you must implement your system substantially in accordance with the **full five year** plan contained in your detailed submissions to the Department notwithstanding any stated conditions therein. In addition, you and any entities with which you have submitted an application

> for 2 GHz PCS, must offer a reasonable level of service in all regions of Canada within two years of the date of this authorization.

The conditions of the special authorizations and the auction spectrum licences do differ with respect to the conditions on transfer. A licensee who has acquired a spectrum licence in the auction may transfer its licence in whole or in part (divisibility), in both the bandwidth and geographic dimensions. The special authorizations do not have the same transferability and divisibility privileges as do auctioned spectrum licences and any proposed transfer of spectrum associated with the special authorizations requires the approval of the Minister in accordance with the policy and licensing document *Wireless Personal Communications Services in the 2 GHz Range: Implementing PCS in Canada* issued June 15, 1995. That policy states at section 6.8.3, Transfer of Authorizations:

> Consistent with general policy in this area and the specific provisions of section 18 of the General Radio Regulations II, the transfer of an authorization to another party will not be allowed without a full review of the application by Industry Canada and the approval of the Minister. In the absence of exceptional circumstances, no transfer of authorizations will be permitted in the first three years after the award of an authorization granted pursuant to this policy to provide PCS.

Further, the *Radiocommunication Regulations* state that the assignment of frequencies to a holder does not confer a monopoly on the use of the frequencies, nor does it confer any right of continuing tenure in respect of the frequencies.

The Department hereby clarifies that entities acquiring spectrum licences in the auction may transfer these licences to each other or to any other entity subject to the conditions and guidelines outlined in section 4.4, Licence Transferability and Divisibility, of the PCS auction Policy. Under these conditions and guidelines, there is no requirement that the transfer be of equal spectral size or that licences be in the same service area. Existing PCS licensees who wish to transfer their special authorizations must make application to the Department for its review and will require the approval of the Minister. However, the existing PCS licensees may exchange with each other and with licensees emerging from the forthcoming auction, equal amounts of PCS spectrum covered under their special authorizations within the same defined geographic area. The amount of spectrum to be exchanged must be in symmetrically paired spectrum blocks of 5 MHz + 5 MHz (10 MHz), similar to the division of the PCS C block for this auction. These PCS licensees must make application to the Department for such an exchange which, if found acceptable, would be effected by amending the involved special authorizations. The Department does not consider an exchange of unequal portions of spectrum nor an exchange that does not entail the same defined geographic area as corresponding to the intent to permit exchanges of spectrum blocks for the purposes of improving spectral efficiency.

The Department reiterates its position that any proposed transfer or exchange does not obviate the requirement of the licensees to fully respect the associated conditions attached to all authorizations and licensees must adhere to all relevant departmental policies, including the policy on the spectrum aggregation limit.

10.5.4 Responses to Clarification Questions Related to the Transfer of PCS Spectrum Licences and Exchange of PCS Spectrum

Question 27:

This is a two-part question related to the use of newly acquired spectrum versus the original PCS spectrum:

(a) Where an entity already holds licensed PCS spectrum and acquires additional PCS spectrum in the auction in a particular licence area, can we assume that the entity would be free to initiate PCS service in the area utilizing the newly acquired spectrum prior to utilizing its original PCS spectrum? If not, why not?

(b) Alternatively, if PCS service has already been implemented in the area (utilizing the original PCS spectrum) but the entity is able and wishes to continue to operate its service in the newly acquired spectrum, can we assume that it would be free to do so? If not, why not?

Answer:

An existing PCS licensee who acquires a spectrum licence in the auction may deploy services in the subject service area on the frequencies covered by the spectrum licence prior to deploying services under their existing PCS special authorization in that service area. Similarly, this PCS licensee may also continue to operate its services that it has deployed under the existing PCS special authorization under the spectrum licence. However, the existing PCS licensee must continue to fully respect the conditions of licence of both its existing special authorization and that of the auctioned spectrum licences considered independently. In particular, the PCS licensee must continue to meet the requirement to implement services and deploy networks within the specified time frames as specified in each of its authorizations.

Question 28:

In the last paragraph of section 4.4 under "Licence Transferability and Divisibility", the Department has noted that it would consider post-auction rationalization.

(a) Would the Department be willing to consider direct swaps of equal amounts of spectrum between willing licensees as part of this rationalization? If not, why not?

(b) Is there any reason to restrict the swaps contemplated in A above to block of either newly acquired or originally licensed spectrum assuming that each licensee's holding after the swap was re-designated in such a way that they continued to hold the same amount of newly acquired spectrum and originally acquired spectrum as they did prior to the swap?

(c) In the same vein, is there any reason that the Department would not be willing to consider spectrum re-designation by a single licensee as part of this rationalization process, where a licensee could re-designate a block of originally licensed spectrum as newly acquired spectrum in exchange for re-designating an equal amount of newly acquired spectrum as originally licensed spectrum?

(d) If the answer to C is no, would the Department permit such a re-designation if an entity found it technically problematic to accomplish what was contemplated in question B above?

Answer:

PCS licensees may transfer in whole or in part the spectrum licences they acquire in the auction, these do not need to be of equivalent spectral size or be in the same service area. The special authorizations do not have the same transferability and divisibility privileges as do auctioned spectrum licences and any proposed transfer of spectrum associated with the special authorizations requires the approval of the Minister in accordance with the policy and licensing document *Wireless Personal Communications Services in the 2 GHz Range: Implementing PCS in Canada* issued June 15, 1995.

Where spectrum authorized by a special authorization is involved, the Department will consider an exchange of equivalent amounts of spectrum that cover the same designated geographic area. The entities contemplating such a proposal must make application to the Department for the required amendments to the special authorization and spectrum licences involved.

10.6 Auction Design and Operation

Several of the clarification questions submitted request specifics on the auction design such as how the Department will address changes to activity rules, bid increments and stage changes. The Department's objective is to design a transparent, fair process that will award spectrum licences to those who value them the most. In support of this goal, the Department stresses the need and desire to maintain its discretion with the overall objective being an efficient allocation of this

public resource. The Department has adopted "best practices" from observing international auctions and has conducted extensive literature reviews on auction theory and will retain the services of auction experts to assist in its determinations as required. The Department will act sensibly in exercising its discretion.

The auction design also allows a degree of flexibility to bidders. For example, the three stages of the auction and the varying activity rules allow bidders the flexibility to react to information gained during the auction and to revise their strategy before all of their eligibility points are committed. During the first stage, bid increments will tend to be relatively large and bidding activity will tend to decline as prices rise and bidders begin to drop eligibility points. At that time, the Department will exercise its discretion and good judgement in order to determine when it is time to move to the next stage of the auction where bidders will be required to be active on a greater percentage of their total eligibility points.

Furthermore, throughout the auction, the Department will communicate its intentions with respect to changes in the auction parameters with bidders through the messaging capabilities in the auction software and bidders will have an opportunity to contact the Department and comment on such actions through an e-mail address which will be provided to all qualified bidders. While the Department does not intend to reply to all e-mail messages, all available information will be taken into consideration when making decisions related to changes to the auction parameters.

10.6.1 Responses to Clarification Questions Related to the Auction Design and Operation

Question 29:

(a) How is the "low activity" criterion that the Department proposes to use when deciding whether the auction should move from the first to the second stage likely to be implemented in practice?

(b) And from the second stage to the third stage?

Answer:

Section 7.3 of the Policy states that there will be three stages in the auction. The Department will consider factors such as the number of bids, number of licences on which bids are placed, and overall eligibility levels to determine the appropriate time to move from one stage to the next, but the ultimate decision will be made at the discretion of the Department. All proposed changes related to stage changes will be communicated to all bidders at least one round before the change is implemented.

Question 30:

In section 7.3, an example of a "low activity level" is given, namely "three consecutive rounds in which new bids are placed on licences, representing ten percent or less of the total points associated with all licences up for bidding".

(a) Is this a necessary condition for moving to the second stage? Could the auctioneer move to the second stage even before this condition is met?

Answer:

The criterion outlined in section 7.3, for when a stage change may be made, is provided only as an example and this criterion is neither necessary nor sufficient for the Department to adopt a stage transition. The auction will move to the second stage at the discretion of the Department. The Department will examine all relevant facts and will exercise its discretion when proposing a stage change and such change will be communicated to all bidders at least one round before the change is implemented.

Question 31:

In section 7.3, it is stated that there will be at least one round's notice of a transition to the next stage. How many rounds notice does the Department expect to give?

Answer:

The Department intends to give at least one round's notice of a transition to the next stage and will exercise its discretion and good judgement in deciding whether more notice is required. Bidders are strongly encouraged to check the message function of the auction software after every round for a notice of the Department's intentions.

Question 32:

Will giving notice of a change of stage commit the Department to change stage?

(a) Within a certain number of rounds,
(b) At a particular round, or
(c) When some other objective criterion is met?

Answer:

When the Department wishes the auction to move to the next stage, it will make a clear announcement of its intentions. Bidders will have an opportunity to communicate any concerns regarding such changes to the Department. Although the Department fully expects to enact a stage transition at the time announced, it is possible that circumstances could arise following the announcement and before the transition that would make the transition ill-advised. In these unlikely circumstances, the Department reserves the right to not proceed with the stage change.

Question 33:

(a) In section 7.3 of the Policy regarding moving from Stage I to Stage II, other than "...e.g. three consecutive rounds in which new bids are placed on licenses, representing ten percent or less of the total points associated with all licenses up for bidding.", what other criteria will be used? What criteria will be used in determining when a stage transition from Stage II to Stage III will occur?

(b) Will merely the contemplation of a stage transition be announced or will the only announcement occur when a decision to transit from one stage to another has been made?

(c) According to "An Experimental Analysis of the Federal Communications Commission's Eligibility Rules" submitted to the FCC by Cybernomics, Inc., with assistance from the Automated Credit Exchange and LECG, contract No. C9854019, November 10th, 1999, auction efficiency is increased when activity requirement percentages stay lower longer. Will the findings of this report be followed in making stage transition decisions, allowing for a greater number of rounds in the first two stages, slowing the hastiness with which transitions are made to more restrictive activity requirements?

Answer:

The level of bidder activity, available licences and number of bidders are examples of the criteria that will be used to determine when the stage should change. The Department may communicate its contemplation of a stage change, but is not obligated to do so. However, when a decision has been made to transition to the next stage, at least one round's notice will be provided. The Department has adopted "best practices" from observing international auctions and has conducted extensive literature reviews on auction theory including the report cited above. In interpreting the result in the report cited above, the Department recognizes that the result is based on a particular experimental auction environment, which may not correspond to the PCS auction

environment in Canada. The Department will continue to exercise its discretion and will consider all information that it deems relevant before implementing such changes.

The following questions are closely related and will be answered together.

Question 34:

Section 7.6 explains how a bidder will lose eligibility points if its activity falls below a certain percentage of its current eligibility points. A range for this percentage is indicated for stages one and two, with the precise number left to be communicated to all qualified bidders "well before the auction begins". In the practice, what is "well before" likely to mean?

Question 35:

What date has been set for the release of the precise figures for the Stages I, II and III activity requirements?

Answer:

The activity rule is used to ensure that the auction proceeds at a reasonable pace while allowing bidders flexibility to react to information gained during the conduct of the auction. The precise figures for the activity rule will be communicated to all qualified bidders in the bidder information document, which will be provided shortly after the application deadline.

The following questions are closely related and will be answered together.

Question 36:

Section 7.7 states that the Department reserves the right to reduce the price for licenses on which the higher bidder has withdrawn its bid. Such reduction will be determined by considering factors such as the stage of the auction and past bidding on that license and similar licenses.

(a) Please advise how this will be applied in practice.

(b) In particular, identify under which conditions will the Department reduce the price of such a license, and when would it refrain from doing so.

Question 37:

(a) What specific factors will be considered in determining the level of reduction of minimum required bids subsequent to a withdrawal on a license and no subsequent activity on that licence?

(b) What type of consistent and smooth and gradual process will be used in decreasing the minimum required bids on licences that have received withdrawals and no subsequent activity?

(c) In the last Industry Canada spectrum auction, the minimum required bid, on licences on which there had been withdrawals, was reduced to 50% of the withdrawn bid which was much too fast. Will a process be put in place that reduces the speed with which such reduction of minimum required bids occurs?

(d) Can withdrawal penalties be incurred more than once on the same licence? For instance, if bidder X bids 50 on licence A and withdraws, then bidder Y subsequently bids 40 on licence A and withdraws, and if bidder Z is the high bidder at auction's close with a bid of 30, what are the withdrawal penalties? What would be the withdrawal penalties if, after bidder X withdraws a bid of 50, bidder X bids again on licence A and withdraws a bid of 40, and the licence is held by bidder Z at auction's close with a bid of 30?

Answer:

Section 7.7 of the Policy deals with the penalties that will be assessed against bidders who withdraw their standing high bid from a licence. The Department has the discretion to lower the required bid amount after a standing high bid has been withdrawn from any given licence. Given that there is no set of clear, objective criteria that can be used to determine the amount by which the required bid should be reduced, the Department will exercise its discretion. Factors such as the stage of the auction, the amount of free eligibility and past bidding on a particular licence and similar licences will be considered. The Department will use its discretion to determine an appropriate reduction for the required bid and if the circumstances warrant it, the amount may be in the order of a 50% reduction.

In the description of withdrawal penalties in section 7.7 of the Policy, the situation involving multiple withdrawals, as outlined in question 37 above, is not specifically addressed. However, section 7.7 does state that the purpose of the withdrawal penalty is to "encourage meaningful bids and to ensure that no loss of revenue occurs as a result of such withdrawals". Further, the bid withdrawal penalty, as outlined in section 7.7, corresponds to the potential loss of revenue caused

by the withdrawal. This same principle can therefore be applied to situations with multiple bid withdrawals.

The Department therefore, hereby amends and clarifies that if a licence that receives a withdrawal ultimately sells for less than the withdrawn bid, the standard withdrawal penalty will be the difference between the withdrawn bid and the ***next highest subsequent bid***[3]. In the case of multiple bid withdrawals on a single licence, within the same or subsequent auction(s), the withdrawal penalty will be calculated based on the sequence of the withdrawn bids and the amounts withdrawn. Generally[4], no withdrawal penalty will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be subject to the standard withdrawal penalty if there is a subsequent higher bid in the same or subsequent auction(s).

Therefore, in response to the examples in the question above, withdrawal penalties can be incurred more than once on a given licence. In the first example given, X and Y would each pay a withdrawal penalty of 10 with Z paying 30 for the licence in question while X would pay penalties equal to 20 in the second example and Z paying 30 for the licence. To further clarify the application of the withdrawal penalty, the following examples should be considered as part of the examples already provided in section 7.7 of the Policy[5].

Examples:

Bidder X bids $100,000 on a licence and withdraws that bid. Bidder Y subsequently bids $95,000 on this same licence and withdraws. At the auction's close, Bidder Z is the high bidder with a bid of $85,000. In this case, the standard withdrawal penalties are assessed as follows: Bidder X owes $5,000 ($100,000-$95,000). Bidder Y owes $10,000 ($95,000-$85,000)

Bidder X bids $50,000 on a licence and withdraws that bid. Bidder Y subsequently bids $40,000 on this same licence, and later withdraws that bid. The licence receives further bids such that Bidder Z eventually bids $45,000, and subsequently withdraws that bid. At the auction's close, Bidder A is the high bidder with a bid of $35,000. In this case, the standard withdrawal penalties are assessed as follows: Bidder X owes $5,000 ($50,000-$45,000). Bidder Z owes $10,000

---

3 In the Policy, this penalty is described as being the difference between the withdrawn bid and the *final selling price* of the licence.

4 The word "generally" is used in this statement to differentiate this "standard" withdrawal penalty from any penalties that might be assessed if withdrawals have occurred in more than five rounds.

5 These examples assume that none of the bidders have made withdrawals in more than five rounds.

($45,000-$35,000). Bidder Y does not incur any withdrawal penalties, because after its bid, Bidder Z promised to pay more than Bidder Y's bid and thus removed Bidder Y's obligation.

Question 38:

Please advise whether the Department would ever reduce the price on a licence with no current standing highest bidder, below the price of similar licences on which there are standing highest bids.

Answer:

The Department generally will not reduce the price of licences in areas which have received bids, except in response to bid withdrawals; however, the Department does reserve the right to do so if it finds it would be in the interest of furthering established policy objectives and/or the progress of the auction.

The following questions are closely related and will be answered together.

Question 39:

Section 7.8 explains the procedure followed for determining bid increments. What criteria will be used to determine when, and by how much, bid increments are changed?

Question 40:

(a) For how long in Stage I will the bid increments be at least 15% of the standing high bid?

(b) What specific criteria will be used and what process will be implemented that provides for a smooth and predictable pattern of declining bid increments on licences?

(c) Are there criteria in place to determine if the bid increment percentage will rise on a license on which there is activity? If so, what are those criteria?

(d) Because bidding is non-discretionary, cutting the minimum increments should not cost much time but will allow for more precise bidding. How quickly will bid increments drop below 15% and then down to the minimums?

Answer:

As outlined in section 7.8 of the Policy, bid increments are necessary to maintain the auction's progress and as the auction proceeds, the bid increments will be changed to allow bidders greater precision in their bids and to keep the auction moving forward at an acceptable pace. The criteria that the Department will consider in exercising its discretion to implement changes to the bid increments will include such factors as the overall bidding activity, the number of new bids, and the number of licences on which bids are placed. The Department will give at least one round's notice when it intends to either decrease or increase the level of the bid increment. While bid increments will generally be changed during a stage change, the Department reserves the right to change the level of the bid increments at any time, subject to having given at least one round's notice to bidders.

As outlined in the question above, the bidding for this auction is non-discretionary, however, the question implies that multiple increment bidding would be available. However, only single increment bidding is provided with the current auction software, so an early reduction from the initial 15% bid increment could result in significant delays for the auction. Also, the current auction software does not provide for licence specific bid increments[6], so changes to the bid increment will generally affect the offered price for all licences. Therefore, the Department will carefully consider all relevant criteria prior to implementing changes to the bid increments.

Question 41:

Proposed changes in the bid increment will be announced "well ahead of their implementation". What is this likely to mean in practice?

Answer:

At least one round's notice will be given of the intention to change the bid increment.

Question 42:

Please advise whether the auctioneer can set different bid increment parameters (i.e. the proportional and minimum absolute increases) for different licenses or service areas?

---

[6] The Department is, however, considering licence specific bid increments for future auction designs. The common implementation of this is referred to as exponential smoothing which bases the percentage increment on the history of the bid activity for a particular licence.

Once the required amount for a further bid (i.e. the current price plus the bid increment) for a specific licence has been set, does that required amount apply until such time as a new bid is placed on the licence, regardless of subsequent changes of the bid increment parameters?

An example of such a situation would be: in round n the standing highest bid for licence x is $2M; given a bid increment percentage parameter of 10% (suppose the percentile increment is larger than the one obtained by multiplying the absolute value by the number of licence eligibility points at all times), the new bid required for x is $2.2M. No bids are placed on x before round n+k, in which the bid increment percentage parameter is lowered to 5%. Would the required bid for x in round n+k still be $2.2M bid, or would it be reduced to $2.1M (calculated using the new parameters)?

Answer:

The current auction software does not provide for licence specific bid increments and as such the percentage increment will be the same for all licences. When a change to the bid increment has been implemented, the acceptable bid for **all** licences is recalculated. Therefore, in response to the example above, the required bid would be reduced to $2.1 M.

10.7 Auction Software

10.7.1 Responses to Clarification Questions Related to Auction Software

Question 43:

Please advise whether there will be any warning if a bidder is about to submit a bid that would violate its spectrum cap limit. In such a situation, please advise whether the bidder will have an opportunity to re-enter bids so the spectrum cap limit is not exceeded?

Answer:

Section 7.10 of the Policy outlines the penalties for exceeding the spectrum aggregation limit. In the checklist for attachments at the end of the Policy, bidders have been asked to submit details of their existing spectrum holdings in each of the 14 Tier 2 areas. This information will be posted when the list of qualified bidders is published and will be available to the public on the Department's Web site at http://strategis.ic.gc.ca/spectrum. It will be each bidder's responsibility to ensure that the spectrum on which they bid, in combination with any existing holdings does not exceed the spectrum cap. The software will not prevent bidders from exceeding the spectrum aggregation limit. There will be no warning if a bidder submits a bid that would violate the

spectrum cap. However, the penalties will be assessed and the bidder will be responsible for paying these penalties at the close of the auction. Therefore, bidders are strongly advised to ensure that they closely respect this limit. If a bidder realizes prior to the close of the round that it has exceeded its spectrum aggregation limit, the bidder may re-enter its bids, provided sufficient time remains in that round.

The following questions are closely related and will be answered together.

Question 44:

It is stated that a bid implying a reduction in eligibility points will trigger a warning message. At this point, will there be an opportunity to re-enter bids so that eligibility points are not reduced, or are the only choices available to continue with the bid already entered or else to waive?

Question 45:

Please advise whether there will be any warning if your bid implies a loss of eligibility points. Does the "default" waiver still apply?

Answer:

As outlined in section 7.9, during the auction, when a bidder submits bids that are below the required activity level, a warning message will appear, advising them of this situation and telling them that they may either submit these bids along with a waiver to maintain full eligibility in the next round, or not submit a waiver and accept a reduction in points for the next round. Bidders will also have an opportunity at this point to re-enter their bids so that eligibility points are not reduced.

The use of the waiver is the default setting in the Auction Management System. Thus, if technical problems prevent a bidder from accessing the auction system, a waiver will automatically be submitted on the bidder's behalf, and its points will remain unaffected for the next round. If a bidder has used all of its waivers, then the "use a waiver" option will not appear, and an automatic waiver will not be submitted on its behalf.

Question 46:

Please advise how the Department would treat a bidder who exceeded the eligibility points available in that round. Is it possible to submit such bids, or are they prohibited by the software? Do penalties apply? Would the bidder be provided with any type of warning? Will the bidder be provided an opportunity to re-enter bids?

Answer:

While it is possible for a bidder to attempt to submit bids for more properties than they are eligible for, the auction software would: reject this submission; produce an error message; and, provide the user the opportunity to re-submit an appropriate bid.

Question 47:

In the event that a technical fault is later shown to have been beyond a bidder's control, would any waivers lost be reassigned?

Answer:

The Department will not re-issue any waivers lost as a result of any technical failure outside of the Auction Centre. Section 7.12 of the Policy advises potential bidders to ensure they prepare contingency plans and have back-up facilities and locations in the event they have technical difficulties from their bidding locations.

Question 48:

In the event of multiple bids by a single applicant by authorized bidders, advise which bid is accepted as the final bid (i.e. first or last bid)?

Answer:

The Auction Management System (AMS) will only accept the last bid submitted on behalf of a qualified bidder before the end of the bidding round. Any previous bids submitted during the round will be over-written. It is the responsibility of the authorized representative to manage its bidding activities appropriately. For example, there should be three designated bidders with bidding software installed on their respective machines for back-up purposes, however, only one designated bidder should be logged into the AMS during a bidding round.

Question 49:

How would the Department deal with a bidder who attempted to make two bids in the same round (e.g. using different software, or by using software and telephone)?

Answer:

Bids may be submitted on behalf of a qualified bidder by any of its designated bidders (using their separate bidding software installations), or by emergency back-up telephone bidding, during a bidding round. However, the Auction Management System (AMS) will only accept the last bid submitted on behalf of a qualified bidder before the end of the bidding round. Any previous bids submitted during the round will be over-written. It is the responsibility of the authorized representative to manage its bidding activities appropriately. For example, there should be three designated bidders with bidding software installed on their respective machines for back-up purposes, however, only one designated bidder should be logged into the AMS during a bidding round.

10.8 Process and Procedural Questions

10.8.1 Responses to Clarification Questions Related to Process and Procedural Questions

Question 50:

Principle 1 of the competition principles identifies "market power" – what is the definition for "market power" for telecommunications in a territory?

Answer:

The term "market power" was used in the Policy in the context of determining whether it is in the public interest to restrict participation in the auction. Based on the principles outlined, the Department decided that open-entry was appropriate for this auction. Any bidders wishing further precision with respect to the meaning of "market power" should contact the Competition Bureau or refer to the Competition Bureau's Web sites at the following addresses:
http://strategis.ic.gc.ca/SSG/ct01069e.html and
http://strategis.ic.gc.ca/SSG/ct01757e.html#3-21-d

Question 51:

A mock auction is scheduled by Industry Canada in the October, 2000 time frame. The structure and participants are not specified. Please advise whether all successful applicants will participate in the same auction, or whether each bidder will participate in an individual mock auction.

Answer:

Section 6.2 of the Policy describes the process that the Department will follow in assessing bidder applications and ensuring that forms have been properly filled in and submitted. Towards the end of this section, the Department noted its intention to hold a mock auction in October 2000, to allow bidders to better familiarize themselves with the auction system. The timing of the mock auction will be changed in order to reflect the change in the auction start date, however the intention is still to hold a single mock auction in which all qualified bidders can participate to test their software and to become familiar with the auction system and rules.

The following questions are closely related and will be answered together.

Question 52:

Please identify the process for submitting questions to Industry Canada after the August 11, 2000 deadline for questions, where a new matter is raised that could not reasonably been asked by August 11.

Question 53:

After August 11, 2000, is there a means to ask questions regarding issues that are not covered in the policy document?

Answer:

In general, the Department will not provide answers to any questions seeking clarification or interpretation of the Policy submitted after the specified deadline of August 11, 2000. However, questions may be submitted via e-mail to pcs.scp@ic.gc.ca after that date and they will be posted on our Web site. At the Department's discretion, answers may be provided in the event that a significant new issue is raised. In addition, we intend to arrange for a teleconference to be held to deal with any process-related questions during the week prior to the application deadline.

Question 54:

(a) Will Industry Canada establish reserve prices on some or all of the licences?

(b) Can the minimum opening bid on a license be lowered at any time during stage one or will Industry Canada reserve the right to lower minimum opening bids only in a (to be determined) limited number of rounds at the beginning of stage one?

Answer:

Section 7.5 of the Policy provides the Department's rationale for establishing opening bids in this auction. Reserve prices, which would be intended to simply recover the administrative costs the Department incurs in managing this spectrum resource, have not been established for this auction. As stated in the Policy: "The Department believes that the spectrum being offered in this auction has a significant value, and is confident that the revenues generated in the auction will cover the relevant spectrum management costs and provide fair compensation to the Canadian public for the use of their spectrum resource." The Department has established what it deems to be appropriate opening bids. However, as stated in the Policy, the Department reserves the right to reduce minimum opening bids at any time during the first stage of the auction for any licence that has not received any bids.

Question 55:

Assuming the Auction starts in November and runs through January, what schedule do you have in place over the Christmas holidays?

Answer:

The auction start date has been moved to January, so this situation will not arise.

Question 56:

Identify the complaint and escalation process that is in place for bidders to submit complaints or concerns regarding any perceived lack of fairness, or deviation from the rules and policy during the bid process.

Answer:

Any concerns regarding the conduct of the auction should be immediately communicated to the auction manager at the toll-free number provided to all bidders. If the issue is not satisfactorily addressed, bidders are encouraged to submit their comments and/or complaints in writing to the: Director General, Radiocommunications and Broadcasting Regulatory Branch, 14th Floor, 300 Slater Street, Ottawa, Ontario K1A 0C8.

Question 57:

Reference Item 3.5 "Future Licensing Processes for PCS Spectrum". It is stated that "It is expected that it will take until the 2002/2003 timeframe before all the necessary domestic and international arrangements can be completed in order to initiate further licensing processes." Please provide an estimate of both the amount of spectrum, as well as the specific frequencies that will be available in the 2002/2003 timeframe.

Answer:

In order to provide the requested clarification, section 3.5 of the PCS paper is modified to include the additional text (underlined) which also forms a revision to the Radio Systems Policy 020 (RP-020), *Guidelines on the Licensing Process and Spectrum Release Plan*, commonly known as the Spectrum Release Plan:

"It is expected that it will take until 2002/2003 timeframe before all the necessary domestic and international arrangements can be completed in order to initiate further licensing processes of additional PCS spectrum outside of the band 1850-1990 MHz. The Department intends to consult in the near future on modifying the Canadian Table of Frequency Allocations to include the band 1710-1850 MHz for mobile service and designation for PCS services, in addition to the existing band 2110-2150 MHz allocated in 1994. It is anticipated that as a result of public consultations and related activities in the Americas to designate future PCS spectrum, that more than 80 MHz of paired spectrum could be licensed by the Department in 2002/2003."

Question 58:

Is a licensee of additional PCS spectrum permitted to grant a security interest in the spectrum licence, subject to compliance with the conditions on transfer contained in section 4.4 of the Policy in connection with any enforcement of such security?

Answer:

The Department has no objection if a licensee grants a security interest in a licence which provides for the transfer of the licence to a secured party under a security agreement in the case of default. Condition of licence number 2, under section 9 of the Policy, indicates that for the purposes of this condition, the "transfer of a licence includes any leasing, subleasing or other disposition of the rights and obligations of the licence". The Department hereby clarifies that "transfer" does not include an interest granted solely for the purpose of taking security unless and until the secured party realizes upon that security. This avoids the situation where the secured party could, by virtue simply of taking a security interest, be considered as the licensee where there is no intention to operate the wireless network under the licence. Note, however, that where the secured party realizes upon the security, then the spectrum aggregation limit and other applicable licence conditions will continue to be applied.

Question 59:

I would like to know if the auction managers have a solution to address this potential discrepancy. Specifically, I would like to know your response to the following questions:

(a) *Could you tell me how the rural and remote communities of northern British Columbia are being served by this auction?*

(b) *Is there any incentive for the winning bidders to bring cellular phone service to these areas?*

(c) *Would you agree that the $4,800,000 opening bid for Tier 2 license presents a barrier to participation for providers who specialize in providing innovative and specialized services to meet the needs of their customers in rural and remote areas?*

(d) *Would it be possible to offer 1 or 2 of the spectrums included in this auction under a Tier 3 auction process to enable smaller regional providers the opportunity to participate in the auction?*

Answer:

We note that today the cellular licensees have extended their cellular coverage to over 93% of the population including a number of areas of northern British Columbia - cellular services are currently being offered by Rogers AT&T, Telus, Prince Rupert Telephone and Northwest Tel

Mobility. However, to advance the Department's goal of extending the competitive provision of mobile wireless telecommunications services to the greatest possible number of Canadians, the Department has in place the Radio Systems Policy 019 (RP-019), *Policy for the Provision of Cellular Services by New Parties*. Its objective is to further stimulate the implementation of cellular services and wireless local loops in underserved and unserved areas of Canada. Under this policy, the Department will accept applications from potential new cellular service providers (that is, parties which are not affiliated with either the local wireline telephone company or Rogers Cantel Inc.) for authorization to offer cellular mobile voice telephony services in areas where competitive cellular service provision is not being offered at the time the application is made.

We note also that one PCS licensee is open to the development by third parties of PCS services in its assigned PCS block at 2 GHz. The licensee has reached a number of commercial agreements in this regard.

In the consultation on the policy and licensing of the additional PCS spectrum in the 2 GHz band, the Department sought comments on a number of matters including the most appropriate geographical breakdown of the spectrum licences, the rights associated with the spectrum licences, flexibility of use and opening bids. Given the likelihood that mobile services will be offered with this new spectrum, the Department proposed reasonably large geographic service areas. Smaller service areas for mobile operation would require many technical and operational restrictions that could impact on the development and deployment of service. In the comments received, support was expressed for national licences, regional licences and a combination of both national and regional licences. Based on these comments the Department determined that regional licences, using Tier 2 service areas, were the most appropriate. This provided the greatest degree of flexibility for those requiring spectrum for expansion or to meet capacity constraints in certain areas and the licences could be aggregated by those wishing to provide national services.

The Department proposed that the spectrum licences would be divisible in both the bandwidth and geographic dimensions. This could, firstly, encourage competition by removing potential entry barriers to certain competitors such as small businesses that may not have been successful in a past auction. Secondly, it could encourage more efficient spectrum use by permitting the deployment of a broader mix of service offerings. Thirdly, it could speed service to unserved or underserved areas. An interested party may enter into negotiations with a licensee to secure spectrum in a specified area and deploy a system which would meet its specific requirements. Further, to ensure that the PCS licensees in this auction can continue to quickly and efficiently adapt their service offerings to changing consumer demands, the Department is providing them with the maximum possible flexibility in determining the services they will offer and the technologies they will employ.

In the consultation document, the Department had proposed opening bids based on population. Most respondents agreed with the absolute level of the opening bids proposed. To reduce the barriers to entry in the less populated areas, the Department has adopted a three-level schedule for opening bids based on the absolute number of people in a service area. It also has reserved the right to reduce the minimum opening bid if no bids have been received on a licence in the initial rounds. Thus, given the large population base for the service area of British Columbia the opening bids for these spectrum licences are relatively high.

The Department has recently licensed wireless spectrum for broadband services in a number of frequency bands such as 28 GHz (LMCS), 24/38 GHz and 2.5 GHz (MCS). The Department will soon be issuing a document to begin its public consultation on a number of issues related to licensing Fixed Wireless Access (FWA) systems in new spectrum bands across Canada. These spectrum bands are intended to provide fixed telephony and/or high speed Internet access to businesses and consumers on a regional/local basis. One of the elements on which comments will be sought is the geographic service areas for these licences.

Question 60:

It is stated in section 6.1 that information about ownership must be provided with an application "to ensure that all bidders are provided with adequate information on the identity of other bidders." Will information that potential bidders submit as part of their applications (in particular their ownership structures) be circulated to other bidders and/or made public? When will this information be made public to other applicants?

Answer:

This information will be posted on our public Web site at the time that the qualified bidders are announced.

Question 61:

If information submitted with applications is to be distributed to other bidders, will material changes in this information that are provided to the Department after applications have been made also be distributed to other bidders? If so, identify the time-frames when the information will be distributed.

Answer:

Any material changes that affects the bidder's status with regard to other qualified bidders will not be permitted. Material changes to the information submitted with the applications will be made available to other bidders via updates to the beneficial ownership information on the Department's Web site in a timely fashion.

Question 62:

When submitting the application, is it necessary to declare options held by existing shareholders to increase their equity participation in a bidder?

Answer:

If options held by any person, including existing shareholder(s) of an applicant have the potential, once exercised, to increase beneficial ownership in the applicant to 10% or greater, details with respect to this interest must be attached to the applicant's application form as stipulated in section 6.1 of the Policy.

Question 63:

Confirm that a telephone bid that is initiated during the allowable time frames in a round will be permitted to be completed even if the call extends past the bid round cut-off. If not, identify the process that will be used.

Answer:

Bidders are strongly advised to prepare their own contingency plans and back-up facilities in the event of technical difficulties at their primary bidding location. This includes, but is not limited to, having more than one designated bidder, multiple telephone lines and Internet service providers (who are on different backbone networks), multiple computers, and multiple bidding locations.

As a last resort, bidders who experience technical difficulties that prevent them from accessing the auction system may use the emergency back-up telephone bidding system, whereby bidders will be able to call the Auction Centre to have departmental staff submit bids on their behalf. Bids submitted in this manner must be submitted within the time frame of the bidding round. **Rounds will not be extended to provide extra time for the submission of back-up bids.**

Departmental resources available for emergency back-up telephone bidding are limited, so bidders may have to wait to have their bids submitted. Bidders must call early enough in the round to ensure that there is sufficient time for their bids to be submitted. Bidders should be aware that it could take several minutes to complete an emergency back-up telephone bid submission. While the Department will use its best efforts to submit bids on behalf of bidders as quickly as possible, the Department assumes no responsibility if such bids are not submitted on time.

The use of the waiver is the default setting in the Auction Management System. Thus, if technical problems prevent a bidder from accessing the auction system or if back-up bids cannot be entered in time, a waiver will automatically be submitted on the bidder's behalf, and its points will remain unaffected for the next round. If a bidder has used all of its waivers, then an automatic waiver will not be submitted on its behalf.

Question 64:

Please provide the name of the ISP being used by Industry Canada for purposes of this auction.

Answer:

Industry Canada utilizes GENet for its Internet connection. GENet stands for Government Enterprise Network and is supplied to government entities by the Government Telecommunications and Informatics Services (GTIS), the telecommunications services arm of the federal government.

Question 65:

In the event that updates regarding policy or process are issued by Industry Canada during the auction, advise the means of such notification as well as the recipients (i.e. authorized bidders and/or authorized representative).

Answer:

Any updates regarding the Policy shall normally be sent to the authorized representatives and the designated bidders via e-mail, shall be posted on the auction server for designated bidders to view, and shall be posted on the public Web site.

For urgent issues such as technical difficulties at the Auction Centre, authorized representatives

shall be notified as quickly as possible by telephone. In the interest of expediency, it is the responsibility of the authorized representative to then ensure that its designated bidders are aware of any urgent issues as quickly as possible. Telephone calls regarding urgent issues will normally be followed up with e-mails to all authorized representatives and designated bidders.

Question 66:

Explain whether Industry Canada would consider supplementing the existing telephone bid submission back-up with an encrypted fax or a standard fax with one-time-pad to ensure authentication. If not, why?

Answer:

Resources available for back-up bidding systems are limited. Industry Canada chose back-up telephone bidding system as the most effective last resort contingency for bidders for several reasons: it allows for direct communications with the bidders as the bids are entered; it provides immediate feedback to the bidder on bid confirmation; it ensures the onus on timing continues to be with the bidder and not on the Auction Centre officer who must enter the data on the bidders behalf; and it allows for telephone recording of the bid entry transaction. The Department is confident that these measures are sufficient and back-up bid submission utilizing fax machines will not be implemented.

Question 67:

Please identify the process for introducing a telephone back-up bid.

Answer:

Bidders who experience technical difficulties that prevent them from accessing the auction system may use the emergency back-up telephone bidding system, whereby bidders will be able to call the Auction Centre to have an information officer submit bids on their behalf.

All calls to the Auction Centre will be recorded and the officer taking an emergency telephone bid will adhere to a prepared script that generally follows these steps:

1. The officer will request name of caller, company name, telephone number and determine nature of call.

2. If the call is a request to enter an emergency bid submission, the officer will ask for a security password to authenticate the caller (procedures regarding authentication will be sent to designated bidders).

3. Once authenticated, the officer will ask the bidder for a fax number to send bid confirmation pages.

4. The officer will provide status information such as the current time, the time the round ends, the round number and the stage of the auction. The officer will also read the most recent message or messages from the Industry Canada message box and will provide the current status of bidder's eligibility points and waivers (before bids are entered).
5. Bids and/or bid withdrawals are then entered on behalf of the bidder on the same bidding screen the designated bidder would normally see. Sequentially, the officer will ask the bidder on which licences the bidder wishes to bid or withdraw and will read back the licence and bid amount as they are entered.

6. Once bids and withdrawals are submitted, the resulting new point total and new total bid amount are provided to the bidder. If necessary, bids are re-entered as per step 5. The bids and withdrawals may then be reviewed if the bidder wishes.

7. The bid and withdrawal confirmation page is printed and faxed to the bidder and the call completed.

Question 68:

How long is it expected to take to introduce a telephone back-up bid.

Answer:

The procedure to authenticate designated bidders who call the Auction Centre to make an emergency telephone bid is expected to take several minutes. The total time for a telephone bid will depend on the number of bids placed by the designated bidders.

Question 69:

How will time limits on rounds be implemented?

Answer:

The auction round schedule is programmed into the Auction Management System (AMS) to automatically accept bids during the scheduled round times. The time clock on the AMS is maintained to a high degree of accuracy by utilizing a time signal from the Industry Canada time server. This server is synchronized to time sources that are accredited by the International Laboratory Accreditation Cooperation (ILAC). The Standards Council of Canada is a member of ILAC.

Question 70:

Will any warning be given before a time limit is reached?

Answer:

There are no supplementary warnings to signal the end of a bidding round. It is the responsibility of the bidder to be familiar with the posted bidding schedule and to ensure bids are submitted before the end of the round.

Question 71:

How long will rounds take?

Answer:

An auction round schedule will be posted each week, announcing the start and end times for rounds. Typically, at the start of the auction, the first round will be scheduled to last three to four hours as bidders familiarize themselves with the auction process. Subsequent rounds on the following days will typically be one hour long with a one hour interval between rounds. As the auction progresses and the activity levels drop, the rounds could be decreased to as little as 15 minutes with similar reduced interval times between rounds. In the case of short rounds, it is even more critical that bidders have contingency plans for power failures or other technical difficulties. Bidders will receive advanced notice of any scheduling changes.

Question 72:

How long after the close of one round will the results of that round be made available and the next round started?

Answer:

At the close of a bidding round, the Auction Management System (AMS) automatically tabulates the bids for that round and within a few minutes posts the results for designated bidders to examine. General public availability takes only a few minutes longer as results are transferred to Industry Canada's public Web site for immediate publication. There is a time interval approximately the length of a round before the subsequent round is opened.

Question 73:

Should one or more licenses go unsold and need to be re-auctioned within 6-12 months as provided for in section 7.14 of the Policy will Industry Canada repeat its qualification procedure for the re-auction, or will all qualified bidders in the initial auction automatically be qualified for the re-auction?

Answer:

For any re-auction, the Department will initiate a new process and all interested parties will be requested to apply. Any qualified bidder from the previous auction will be required to re-apply.

The following questions are closely related and will be answered together.

Question 74:

How would the Department propose to deal with a general failure of the electronic bidding system, particularly if some, but not all, bidders had made their decisions for that round?

Question 75:

If the electronic auction system is inoperative due to circumstances beyond bidders' control (for example, a breakdown of the auctioneer's system) will the auctioneer still play waivers by default on behalf of bidders if they are unable to submit bids by other means?

Question 76:

Please explain the provisions for abandoning a round and starting again, in the event of technical difficulties.

Answer:

If at any time, whether before or during any round of the auction, the auction manager is of the opinion that due to exceptional circumstances, including but not limited to technical difficulties at the Auction Centre, it is necessary to cancel or abandon that round, the auction manager shall notify bidders that the round shall not take place as scheduled or is deemed void, as the case may be, and shall notify bidders of the amended bidding schedule as quickly as possible.

Where a bidding round is abandoned after its commencement, the round would be cancelled and rescheduled using the same round number as if the round had not taken place. Any bids that had been submitted in that round prior to the cancellation would be cleared from the system and would not be made public. There would be no loss of waivers or eligibility and bidders would be required to resubmit their bids during the rescheduled round.

The following questions are closely related and will be answered together.

Question 77:

(a) Is the telephone number for making bids dedicated to a specific bidder?

(b) If the telephone number is not dedicated to a specific bidder, what procedure would apply if the telephone line is busy?

(c) Would there be alternative numbers?

Question 78:

Is the telephone number provided for submitting proactive waivers specific for each bidder or common?

(a) What would happen if the line were busy?
(b) Will there be alternative or back-up numbers?

Answer:

A common, toll-free number to the Auction Centre will be given to all qualified bidders. The Auction Centre will be staffed with information officers who will accept emergency telephone bids on behalf of the bidders as well as proactive waivers. Calls will be taken in the order that they arrive and if all officers are busy, calls will be held in a queue for the next available agent. The Department does not anticipate the need for additional telephone numbers. Only the common toll-free number to the Auction Centre will be given to the qualified bidders.

Question 79:

Regarding telephone back-up bidding and making proactive waivers, what happens in the event of a telephone fault at the auctioneer's end?

Answer:

The Auction Centre telephone system will be tested daily to ensure it is operating normally. In the unlikely event of a failure of the Auction Centre telephone system, bidders would be notified, using alternate means, via e-mail and other telephone systems, of the procedures, process or alternate phone numbers to use while the problem is being corrected. With regards to proactive waivers, the functioning of the Auction Centre telephone system will be closely monitored during the specific time frame when it is likely that a proactive waiver could be submitted.

Question 80:

What time window does the Department expect to use for submission of proactive waivers?

Answer:

Auction participants will generally be provided a time window equal to that of a bidding round for the submission of a proactive waiver. For example, if the rounds are one hour in duration, then bidders will be given one hour within which to submit a proactive waiver.

Question 81:

Reference the irrevocable standby letter of credit (LOC). Please provide the following information;

(a) The name of the individual that will be responsible for retaining and returning the LOC to the applicant, and

(b) Assuming an applicant is successful in the auction, incurs no penalties, and submits full payment within the required timeframes, please advise when the LOC will be returned to the applicant. If a bidder withdraws either before or during the auction and has incurred no penalties, please advise when the LOC will be returned.

Answer:

The Manager, Wireless Networks, Earl Hoeg, will be responsible for all transactions involving the handling of the irrevocable standby letters of credit.

Assuming an applicant is successful in the auction, incurs no penalties, and submits full payment within the required time frames, the letter of credit will be returned to the applicant shortly after the receipt of the final payment. If a bidder withdraws either before or during the auction and has incurred no penalties, and is not a standing high bidder on any licence, then the bidder may request that the letter of credit be returned by notifying the Manager, Wireless Networks. Upon having verified that these conditions have been met, the letter of credit will be returned with the shortest possible delay.

Question 82:

Reference Item 6.1.3 on page 22 [of the Policy Paper]. It is stated that "A list of all applicants will be made public via the Department's Strategis Web site... shortly after the closing date for receipt of applications." Please advise whether the number of eligibility points and the amount of the financial deposits submitted by each applicant will also be made public at that time, or at a later date.

Answer:

In addition to the names of the qualified bidders, the Department will publish the amount of the deposit and the associated number of eligibility points requested. It should be noted, however, that the number of eligibility points awarded to qualified bidders may differ as a result of the Department's analysis. For example, section 7.4 of the Policy states:

> . . .When determining their desired initial level of eligibility points, applicants must take into account their existing spectrum holdings in each of the 14 service areas. Regardless of the financial deposit submitted by any bidder, no bidder will be given more eligibility

points than it can possibly use without violating the spectrum aggregation limits. As part of their application material, companies must submit details outlining their total existing spectrum holdings in each of the 14 areas, which will be verified by the Department in determining the initial level of eligibility points assigned.

In the event that the value of an applicant's requested level of points exceeds the amount of the deposit submitted, then that applicant's points will be determined by the value of the deposit submitted and the amount permitted by the spectrum aggregation limit.

The following questions are closely related and will be answered together.

Question 83:

In section 7.2, it is stated " . . . full information on the bids placed by all bidders will be made available after each round." Please advise whether this includes waivers.

Question 84:

Does full information about the bids placed by all bidders as outlined in section 7.2, include full information regarding each specifically named bidder's use of a waiver, submission of a withdrawal and eligibility reductions?

Answer:

The round results available at the end of each round through the Auction Management System includes the number of eligibility points and waivers remaining for each bidder, as well as details on the licences bid by each bidder and any withdrawals. The Bid Tracking Software (BTS) provides further details and calculations. The format for the round result files for the PCS auction, will be the same as that used for the 24 and 38 GHz auction. Therefore, interested parties may use the Bid Tracking Software from that auction to customize their own tracking tools or to obtain a better idea of the types of information that will be made available. BTS files for the 24 and 38 GHz auction may be found on the Department's Web site.

Question 85:

As an alternative to an irrevocable standby letter of credit, would Industry Canada be prepared to accept a bidder deposit in the form of cash? What sort of financial instrument would Industry Canada propose to hold the proceeds so obtained, and would Industry Canada agree that any interest earned on these proceeds while on deposit would accrue to the bidder?

Answer:

The only acceptable form of deposit that will be accepted for this auction is in the form of a valid irrevocable standby letter of credit as outlined in Appendix 6 of the Policy.

The following questions are closely related and will be answered together.

Question 86:

Reference Appendix 6. Please confirm that applicants may submit more than one irrevocable standby letter of credit (LOC).

Question 87:

Is a bidder able to submit more than one letter of credit from more than one financial institution as long as the letters of credit total the financial deposit required by the bidder? If more than one letter of credit from more than one financial institution is allowed, would there be any conditions?

Question 88:

In section 6.1.1 the Department states, "The financial deposit is to be in the form of an irrevocable standby letter of credit." Please confirm that multiple irrevocable standby letters of credit adding to the required deposit are also acceptable.

Answer:

Multiple letters of credit from one or more financial institutions will be permitted *within reason*. The Department will treat the financial deposit for an applicant as being the sum of the amounts of each accepted letter of credit. Each letter of credit must comply with the conditions laid out in

the Policy concerning letters of credit. No letter of credit shall have any conditions requiring the Department to draw on the letters in any particular order of priority, or requiring any letter to be drawn upon completely before drawing upon any other letter.

Question 89:

What would the Department propose to do if there was any evidence of active measures being taken to frustrate bidding (e.g. a denial of service attack on the server)?

Answer:

On first detection of an attack, the Department would advise Industry Canada's Security Directorate and the RCMP and request that they immediately begin an investigation. If the Department detects a malicious attack from one or more sources, that prevents the auction server from receiving or processing bids, then the Department may delay the auction until such time that the source of the attack can be identified and terminated or until alternate arrangements to proceed with the auction can be made. Bidders would be notified of any changes to the auction schedule that may result.

Question 90:

We note under licence number 2-11 – Saskatchewan that the population listed for licence 2-11a (980,770) is different than that listed for licences 2-11b, c and d (1,609,690). Is this a typographical error?

Answer:

There is a typographic error in Appendix 7 for licences 2-11b, 2-11c and 2-11d (Saskatchewan) with respect to population. The correct population figure for these three licences is 980,770.

Question 91:

Please confirm our understanding that Ottawa and Hull are included within the same service area (2-06).

Answer:

Both Ottawa and Hull are included in Tier 2 service area 2-06 Eastern Ontario and Outaouais. The Department's document *Service Areas for Competitive Licensing* provides descriptions of the four tiers of service areas that may be used for licensing activities. The nomenclature used in the document for the service areas of the various tiers was intended to provide a convenient reference to the various geographic areas they cover. There are, however, discrepancies in the nomenclature for service areas 3-14, 3-15 and 4-055 which will be amended as follows:

Service area	3-14	Upper Outaouais
Service area	3-15	Ottawa/Outaouais
Service area	4-055	Ottawa/Outaouais

Question 92:

In section 4.2 of the Policy it states "The 14 service areas generally follow the provincial boundaries, although Ontario and Quebec each consist of three areas and some other minor deviations are made around provincial borders to reflect certain wireline service areas and to avoid having a service area boundary cut through a population centre." Will the Department please list the "minor deviations" communities and outline in which Province and/or Tier 2 license area the subject population centre falls?

Answer:

The Tier 2 service areas are based on 1996 Statistics Canada census divisions, and result in 14 areas covering all of Canada. The 14 service areas generally follow the provincial boundaries, although Ontario and Quebec each consist of three areas. Some other minor deviations are made around provincial borders to reflect certain wireline service areas and to avoid having a service area boundary cut through a population centre, so as to minimize potential interference problems. Service areas are translated into areas based on spectrum grid cells[7] to facilitate their electronic storage and representation. Given that an individual grid cell is only 25 km^2 in area, spectrum grid cells offer sufficient granularity such that the variations between the borders of the grid cell defined areas and the underlying Census divisions and subdivisions are minute. In the event that any interference issues must be resolved between two licensees, the boundary as defined by the spectrum grid cells will be the one used.

The Tier 2 service area minor deviations are:

---

[7] Spectrum Grid cells are six-sided figures with an area of 25km^2 that fit together in an interlocking pattern over the geography of Canada.

1. Sable Island is included in service area 2-02 Nova Scotia and Prince Edward Island.

2. A portion of the Matapédia Census subdivision has been captured by service area 2-03 New Brunswick. Consequently, the towns of Runnymede, QC, Saint-Laurent, QC and Sellarsville, QC are included in service area 2-03 New Brunswick, whereas the towns of Mann Mountain, NB and Mann Mountain Settlement, NB are included in service area 2-04 Eastern Quebec.

3. The National Capital Region which includes, but is not limited to, the cities of Ottawa, Hull, Gatineau, and Aylmer is part of service area 2-06 Eastern Ontario and Outaouais.

4. The towns of Flin Flon, Manitoba and Channing, Manitoba are included in service area 2-10 Manitoba, however, a rural portion of the Flin Flon Census subdivision has been captured by service area 2-11 Saskatchewan.

5. A large rural portion of the Makaoo Census subdivision which lies in both Alberta and Saskatchewan is included in service area 2-11 Saskatchewan. Onion Lake, Saskatchewan is included in service area 2-12 Alberta.

6. A large portion of the Lloydminster Census subdivision which falls in both Saskatchewan and Alberta has been captured by service area 2-12 Alberta. Consequently, the town of Lloydminster, Saskatchewan is included in service area 2-12 Alberta.

Detailed maps of these areas are available on the Department's Web site at: http://strategis.ic.gc.ca/SSG/sf05248e.html.

Question 93:

If I acquire a PCS licence in the auction that is on one of the coasts of Canada, can I provide service to my clients that are on ships in these waters?

Answer:

Given the geography of Canada, the borders of some of the service areas will inevitably have incidental coverage of water bodies and/or coastal areas. The services permitted in the PCS frequency bands are for fixed or mobile use. Fixed service is defined as a radiocommunication service between specified fixed points. A mobile service is defined as a radiocommunication service between mobile and land stations, or between mobile stations. Thus, the provision of a fixed or mobile service within these incidental areas is permitted taking into account the domestic and international sharing arrangements that are in effect and outlined in sections 5.3, Domestic Sharing Arrangements, and 5.4, International Coordination, of the Policy.

Question 94:

Section 9 of the Policy indicates that the provisional licence winner must submit the declaration of ownership and control within ten business days of the auction's close. Section 8.4 Eligibility Documentation further indicates that the Department will review these documents and notify each provisional winner as to its compliance with the Canadian ownership and control requirements. If after 60 days of being notified of any required changes, the provisional winner has not complied, then the licence winner will forfeit its right to have any licences offered.

We note the declaration of intent to comply with foreign ownership requirements in the application. Nevertheless, this does not ensure compliance. Indeed, with only the penalty at risk, foreign bidders may well be tempted to bid and win on speculation that they can negotiate favourable control provisions. Upon a foreigner's victory, one could foresee that Industry Canada will be hard pressed, given the difficulties and complications involved in a delayed re-auction, to decline an aggressive foreign victor because of some opaque judgement on compliance. There are too many precedents in the Canadian telecommunications market for anyone to claim the existence of a clear compliance boundary. Such a likely predicament distorts the process and presents serious uncertainties to the legitimate participants without benefitting Canadians.

Why does the Department not take the proper steps and time involved to avoid these problems and ensure the integrity of the foreign ownership rules is not comprised by requiring all prospective bidders to demonstrate compliance with the Canadian ownership and control rules and by verifying that this is indeed the case before being qualified to participate and prior to the commencement of the auction?

Answer:

Bidders, who are provisional licence winners, will be required to submit documentation related to their compliance with the fourth condition of licence, Eligibility Criteria, discussed in section 9 of the Policy. The provisional licence winner must submit the Declaration of Ownership and Control (see Appendix 8 of the Policy), as well as all documents listed therein, within ten Business Days of the auction's close.

The Department is satisfied with the current process for ensuring compliance with ownership and control. As noted in the Policy, Industry Canada is confident that the discipline enforced by the due diligence, associated with advancing the sums of money necessary for an entity to bid successfully, will ensure the integrity of the process. Secondly, Industry Canada will pursue its evaluation and analysis of entities who have won a licence with due diligence to ensure they indeed demonstrate compliance with the ownership and control provisions.

In the event that a provisional licence winner does not, in the opinion of the Department, comply with the Canadian ownership and control requirements, the Department will require that the provisional licence winner make changes in order to become compliant. If the provisional winner fails to comply with the Canadian ownership and control requirements within sixty days of being notified by the Department of the required changes, then the provisional licence winner will forfeit its right to have any licences offered in this auction process issued to it and will be subject to the penalties outlined in section 8.3 of the Policy.

Question 95:

Reference Appendix 8, Declaration of Ownership and Control for Provisional Winners of 2 GHz PCS Licences. Please provide the list of acceptable evidence and documentation regarding items 2.5 and 3.3.

Answer:

The Department would accept either an affidavit or statutory declaration from the individual confirming his/her citizenship and ordinary residence, with sufficient information to demonstrate that the individual understands the criteria and legal requirements under the relevant radiocommunication and telecommunications regulations; or a letter from a member in good standing of a law society of Canada confirming that (s)he has examined the appropriate documentation and is satisfied that the individual is a Canadian citizen ordinarily resident in Canada. The documentation relied upon for the determination should also be identified.

Question 96:

In order to bid on spectrum do you have to be a radiocommunications carrier? Or can you bid/win then apply? (Assuming Canadian ownership applies)?

Answer:

All entities are eligible to apply to participate in the auction, however at the close of the auction, licences will only be issued to companies wishing to operate as radiocommunication carriers. Within ten Business Days after the close of the auction, all successful bidders are required to submit documentation demonstrating compliance with the Canadian ownership and control requirements.

Question 97:

In section 5.1.1 of the Policy the Department deals with the topic of accelerating the existing transition provisions for all licensed PCS spectrum. Are any of the spectrum blocks to be auctioned, as outlined in Table 4.1 of the Policy, presently licensed to microwave incumbents, in major urban areas (having a population of 25, 000 or more) and if so which blocks and in which Tier 2 licence areas?

Answer:

The technical information on the currently licensed microwave stations affecting the PCS spectrum blocks are listed in the Department's Technical and Administrative Frequency List (TAFL). This list is available through our Strategis Web site at http://strategis.ic.gc.ca/spectrum.

It is estimated that approximately 350 frequency assignments for microwave fixed services may affect the C and E blocks across Canada. Interested parties are responsible to extract the relevant information and perform the necessary studies, to determine if any of the fixed microwave assignment may affect their PCS business plans. The provisions for the displacement of microwave frequency assignment are modified, as per section 5.1, Displacement of Microwave Incumbents, and outlined in Appendix 2 of the PCS auction Policy.

Question 98:

On page 34 it is stated that the option to use a waiver will not be shown by the software if all waivers are used up. However, it is not explicitly stated that proactive waivers cannot be placed if a bidder has used all its waivers. Can a proactive waiver be played by a bidder who has used up all its waivers?

Answer:

A waiver can be used in lieu of bidding or in the case of technical difficulties, the system will apply a waiver automatically. If a bidder has used all of its waivers, then the "use a waiver" option will not appear in the software, and an automatic waiver will not be submitted on its behalf. Further, if a bidder has used all of its waivers, then it will not be able to submit a proactive waiver.

Question 99:

Reference "Checklist for Attachments" on page 59, regarding the requirement to file "Details of any existing spectrum holdings in each of the 14 tier 2 areas, which will be captured by the spectrum aggregation limits." Please advise the acceptable format for the submission of this information, including any necessary attestations or signatures.

Answer:

Section 7.10 of the Policy outlines the penalties for exceeding the spectrum cap aggregation. In the checklist for attachments at the end of the Policy, bidders have been asked to submit details of their existing spectrum holdings in each of the 14 Tier 2 areas. Regardless of the number of eligibility points requested, no bidder will be given more eligibility points that it can possibly use without violating the spectrum aggregation limit. The Department will verify the information submitted in determining the initial level of eligibility assigned. This information will be posted when the list of qualified bidders is published and will be available to the public on the Department's Web site at http://strategis.ic.gc.ca/spectrum. Any format for submission of the information on existing spectrum holdings is acceptable as long as it contains the required information. However, to facilitate this, the Department provides a new Appendix 9 to the Policy, which may be used for this purpose. A copy of this new appendix is included as part of these amendments and supplements and it will also be available on the Department's Web site.

Question 100:

Will IC post notification of the spectrum holding of each licensee by licence area prior to the auction? Alternatively, will IC post notification of the maximum amount of spectrum, which can be purchased by each licensee in each licence area prior to the auction? Will notification of changes in status be made available during the auction?

Answer:

The Department will post a list of the spectrum holdings of each of the auction participants when the names of the qualified bidders are published. Notification of changes to the spectrum holdings will also be made available on the Department's Web site. Changes to the spectrum holdings, however, will generally not be permitted during the auction.

Industry Canada

[redacted]

Appendix 4

(Revised, October 2000)

Application to Participate in the Auction of Additional PCS Spectrum in the 2 GHz Frequency Range

(Please print or type all information below)

Part 1. Applicant Details

1. Applicant Name:

_____

2. Address (Street, P.O. Box, etc.):

_____

3. City, Town: _____ **4. Province:** _____ **5. Postal Code:** _____

6. Language Preference: ❑ English ❑ French

7. Applicant Classification

❑ Corporation ❑ Individual ❑ Partnership ❑ Joint Venture ❑ Other _____

Details of the beneficial ownership for every entity that owns more than 10% of the Applicant's voting shares, non-voting shares, partnership interests, or any other beneficial interests, as the case may be, must be submitted with this application.

Part 2. Authorized Representative

The person listed below is nominated by the Applicant as its authorized representative. Unless otherwise indicated by the Applicant, all documentation pertaining to the PCS auction will be forwarded to this Authorized Representative.

8. (a) Authorized Representative Name	Title	Telephone No. ( )
E-mail Address		Fax No. ( )
Mailing Address		

Part 3. Designated Bidders

The persons listed below are nominated by the Applicant as its designated bidders.

9. (a) Designated Bidder No. 1

Name		**Date**
Signature of Bidder No. 1	**Telephone No.** ( )	**Fax No.** ( )	**E-mail Address**
Mailing Address		

9. (b) Designated Bidder No. 2

Name	**Title**	**Date**
Signature of Bidder No. 2	**Telephone No.** ( )	**Fax No.** ( )	**E-mail Address**
Mailing Address		

9. (c) Designated Bidder No. 3

Name	**Title**		**Date**
Signature of Bidder No. 3	**Telephone No.** ( )	**Fax No.** ( )	**E-mail Address**
Mailing Address			

Part 4. Desired Initial Level of Eligibility Points and Calculation of Required Financial Deposit

Enter the initial total number of points worth of licences on which you wish to be able to bid in any round in box A below. This will be your initial level of eligibility points. Refer to section 7.4 of the *Policy and Licensing Procedures for the Auction of Additional PCS Spectrum in the 2 GHz Frequency Range.*

10. Box A - Eligibility Points

Calculate your required financial deposit by multiplying the value in box A the appropriate dollar value. For the first 30 eligibility points, the deposit is equal to $50,000 per point and $200,000 per eligibility point requested thereafter. The total number of points associated with all 56 licences available in this auction is 1172, which would require a financial deposit of $229,900,000 (30 X $50,000 + 1142 X $200,000). Enter the appropriate value in box B below. This will be the value of your required pre-auction deposit, in the form of an irrevocable standby letter of credit which meets, and is subject to, the terms and conditions contained in Appendix 6. Please note, regardless of the number of eligibility points requested, no bidder will be given more eligibility points that it can possibly use without violating the spectrum aggregation limit.

11. Box B - Financial Deposit | **$** |

Part 5. Consent and Authority

12. Prohibition of Collusion

I certify that the Applicant has not entered into and will not enter into any agreements or arrangements of any kind with any competitor regarding the amount to be bid, bidding strategies or the particular licence(s) on which the Applicant or competitors will or will not bid. For the purposes of this certification the word competitor means any entity, other than the Applicant or any Associated Entity, who could potentially be a bidder in this auction based on its qualifications, abilities or experience. I understand that if this certification is found not to be true and complete in every respect, then:

(1) the Applicant will be disqualified from bidding or continuing to bid;
(2) the Applicant's standing high bids will be deemed to have been withdrawn, and the appropriate penalties will apply; and
(3) any licence that may already have been issued to the Applicant as a result of this auction process may be revoked.

(Note section 6.5 of the *Policy and Licensing Procedures for the Auction of Additional PCS Spectrum in the 2 GHz Frequency Range* and section 10.4 of the *Amendments and Supplements and Clarification Questions to the Policy and Licensing Procedures for the Auction of Additional PCS Spectrum in the 2 GHz Frequency Range.)*

13. Canadian Ownership and Control

I certify that I have read and I understand the contents of the Canadian carrier eligibility criteria as set out in section 10 of the *Radiocommunication Regulations* and I comply, or will comply, with the Canadian carrier ownership and control requirements, as applicable.

14. Release of Information

I consent to the publication by Industry Canada of all the information contained in this Application and attachments, except for the *Deed of Acknowledgement*, *The List of Designated Bidders*, and the irrevocable standby letter of credit.

15. Back-up

I certify that the Applicant has thoroughly reviewed the back-up recommendations provided in section 7.12 of the *Policy and Licensing Procedures for the Auction of Additional PCS Spectrum in the 2 GHz Frequency Range* document. Should the Applicant wish to change one or more of their designated bidders or information related to their designated bidders such as fax or phone numbers I will notify the Manager, Wireless Networks (address given in section 2 of the *Policy and Licensing Procedures for the Auction of Additional PCS Spectrum in the 2 GHz Frequency Range* document) and provide the revised information.

16. Signature

I certify that I as the authorized representative of the above-named Applicant, that I have read the document *Policy and Licensing Procedures for the Auction of Additional PCS Spectrum in the 2 GHz Frequency Range* and understand the policies and rules specified therein, and that the foregoing certifications and all matters and things stated in this Application and attachments are true and correct.

SIGNED this _____ day of _____, 2000

_____

Signature of Applicant or Individual Authorized to Sign for the Applicant

Appendix 9

(New, October 2000)Spectrum Holdings Declaration Form

Service Area	Licensee Name(s)	Total Spectrum Holdings (MHz)				Signature of Director or Corporate Officer
		Cellular	PCS at 2 GHz	Other High Mobility	Total	
2-01, Newfoundland						
2-02, Nova Scotia & P.E.I.						
2-03, New Brunswick						
2-04, Eastern Quebec						
2-05, Southern Quebec						
2-06, Eastern Ontario & NCR						
2-07, Northern Quebec						
2-08, Southern Ontario						
2-09, Northern Ontario						
2-10, Manitoba						
2-11, Saskatchewan						
2-12, Alberta						
2-13, British Columbia						
2-14,Yukon, N.W.T. & Nunavut						